Comments Received by the Department of
Consumer and Worker Protection on

Proposed Rules related to Further Amendments of Debt Collectors.

From:	LaLime, John S.
To:	rulecomments (DCWP)
Cc:	Auchterlonie, Sarah J.; Dempsey, Leah C.
Subject:	[EXTERNAL] ACA International Comments Regarding DCWP Rules Relating to Debt Collectors
Date:	Monday, June 9, 2025 9:38:17 PM
Attachments:	ACA International Comments_Debt Collection Rules_.pdf

Good evening,

Please find attached ACA International's comments regarding DCWP's rules relating to debt collectors.

When possible, please confirm receipt of the comments. ACA looks forward to a productive hearing tomorrow.

Thank you,

John S. LaLime
Brownstein Hyatt Farber Schreck, LLP
600 Massachusetts Ave NW, Suite 400
Washington, DC 20001
[redacted]

WE HAVE MOVED: Our new address is: 600 Massachusetts Ave NW, Suite 400, Washington, DC 20001

ACA®

INTERNATIONAL

VIA EMAIL: rulecomments@dewp.nyc.gov
NYC Department of Consumer and Worker Protection
Hon. Vilda Vera Mayuga
42 Broadway
New York, NY 10004

Re: ACA International, the Association of Credit & Collection Professionals ("ACA"), Comment regarding Proposed Amendments to Rules Relating to Debt Collectors (the "Proposal")

Dear Commissioner Mayuga and Department staff:

Thank you for your consideration of the comments below.

Background about ACA International

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 1,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 150,000 employees worldwide. ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to recent ACA member data, 35% of ACA members are 10 employees or fewer, 56% of ACA members are 25 employees or fewer, and 70% of ACA members are 100 employees or fewer.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars– dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables businesses to survive, helps prevent job losses, maintains the credit system, and reduces the need for tax increases to cover governmental budget shortfalls.

An academic study about the impact of debt collection confirms the basic economic reality that losses from uncollected debts are paid for by the consumers who meet their credit obligations:

> In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus, excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity influences on both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, **the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers**.[1]

In short, consumer harm can result in several ways when unpaid debt is not addressed, and ACA members work to help consumers understand their financial situation and what can be done to address it and improve it.

ACA members benefit all consumers by lowering the costs of goods and services

ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve consumers' debts, which in turn saves every American household, on average, more than $700, year after year.[2] The accounts receivable management ("ARM") industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost. For example, in 2018 the ARM industry returned over $90 billion to creditors for goods and services they had provided to their customers.[3] And in turn, the ARM industry's collections benefit all consumers by lowering the costs of goods and services—especially relevant when rising prices are impacting consumers' quality of life throughout the country.

ACA members also follow comprehensive compliance policies and maintain high ethical standards to ensure consumers are treated fairly. ACA contributes to this goal by providing timely industry-sponsored education as well as compliance certifications. ACA members are committed to assisting consumers as they work together to resolve financial obligations, all in accord with the ACA Collector's Pledge that all consumers are treated with dignity and respect.

ACA values public engagement and collaborative rulemaking

ACA appreciates the New York City Department of Consumer and Worker Protection's ("DCWP's") partnership in developing rules that work for both consumers and the credit system as a whole. ACA urges DCWP to consider the Proposal in light of these, and other, comments and make changes accordingly.

Additionally, ACA urges DCWP to delay the Proposal's effective date. As will be discussed in more detail hereafter, the six to eight week implementation window is simply too short brief to make the required changes. The Proposal's regulatory changes are not small, incremental edits—they represent wholesale changes to practice and policy. Internal policies, procedures, and

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[1] Todd Zywicki, The Law of Economics of Consumer Debt Collection and its Regulation, 28 Loy. L. Rev. 187 (2016).

[2] https://kaulkin.com/survey-says-arm-industry-returns-90-1-billion-to-the-economy/

[3] *Id.*

compliance mechanisms must be updated; outside vendors must be contacted and educated. There is much work to do.

ACA members endeavor to follow every federal, state, and local law. That becomes incredibly difficult when implementation times are too short. Aside from other policy and legal concerns, ACA stresses that more time to comply is necessary. More time will allow ACA members the needed time to implement the Proposal, and allow DCWP more time to reassess and refine the Proposal. That will lead to better policy and better results.

The Proposal Is Unreasonable, Unnecessary, and Confusing for Consumers, Creditors, and Collectors Alike

While ACA appreciates that the Proposal is an attempted effort to benefit consumers, the Proposal will instead have the opposite impact. Without providing data or support for making sweeping changes in New York City—changes that conflict with requirements throughout the country—DCWP creates arbitrary new limitations, and requires confusing or wrong notices that won't help consumers. Specifically, ACA provides the following comments:

- **The implementation period is impossibly short**. ACA members need time to review, process, program, and implement the Proposal's many comprehensive changes. When the Consumer Financial Protection Bureau's implementing regulation for the Fair Debt Collection Practices Act ("Regulation F")[4] went into effect at the federal level, there was a staggered implementation timeline that lasted nearly a year and a half. DCWP's implementation timeline of a few months is not enough time to do the practical work expected for compliance. ACA asks that the Proposal's effective date be delayed at least a year after the Proposal becomes final.
- **The Proposal's communications limits are unnecessarily and unlawfully restrictive.** The Proposal offers no justification as to why communications must be further restricted beyond current law and Regulation F. Specifically, the following problems require correction:
    - Definition of *Debt Collector*. The debt collector definition is arbitrary, does not align with the FDCPA, and is not supported by data or an administrative record.
    - Frequency Limits. The Proposal's frequency limits are supported by no rational justification, and perhaps even worse, discriminate based on which entity is speaking. This speaker and content discrimination is unlawful.
    - Electronic Communications. The Proposal's limits on electronic communications are unnecessary in the 21st Century. If DCWP has analytical data or information that consumers widely prefer hard copy or telephone calls, ACA would be eager to review that evidence, which would be in conflict with multiple studies on this topic.

[4] 12 C.F.R. Part 1006.

- **The Proposal's employment communications limits are a First Amendment violation and are impossible to implement.** The Proposal asks collectors to do the impossible. More clarity is needed.
    - Place of Employment and Work Hours. Collectors have no way of knowing when consumers are at work or when their work hours might be. Collectors cannot be expected to piece this information together, which flies in the face of more flexible work environments and hours for workers at all levels.
    - Work-Provided Telephone Numbers and Email Addresses. There is no universal available list of personal vs work-provided phone numbers or email addresses. Unless collectors are specifically told, there is often no way to know.
- **The Proposal's notice requirements are often wrong or conflate key terms**. When inaccurate information is communicated, or when key terms are confused, collectors may be liable for unintentional mistakes.
    - Notice of Credit Reporting. The Proposal requires collectors to say that they "will" report debts to consumer reporting agencies. But this may not be true in all situations.
    - New York City Validation Notice. The required notice continues to conflate "validation period" and "verification." This must be corrected to preserve the safe harbor provided under federal law.
    - Time-Barred Debt Notice. Debt that is beyond the statute of limitations for enforcing in a lawsuit is not "expired". It can still be collected. The current notice language provides inaccurate information.
- **The Proposal's verification rules confuse time frames and deprive collectors of property rights without compensation**. Once again—when even minor details are confused, collectors are exposed to legal and regulatory risk. More clarity and revisions are needed.
    - Timing. The effective date regarding notices is different from the substantive effective date, meaning consumers may receive notices that do not apply to them.
    - Uncompensated Takings. When entities other than original creditors cannot verify a debt within 60-days, their right to collect on those debts is permanently extinguished. This is an unlawful government taking.
- **The Proposal's time-barred debt rules obfuscate what should be clear rules**. The Proposal effectively requires a barrage of information that will not be helpful to consumers. Moreover, the required notice inaccurately states that time-barred debts have "expired." This, of course, is not true.
- **The Proposal's judgment enforcement rules unlawfully limit authority of the courts**. The Proposal states that verification cannot occur with only a default judgment—meaning that a valid court order is not enough to use to collect debts. This unlawfully diminishes the effectiveness and authority of the courts.

- **The Proposal's prohibition on medical debt reporting is bad for patients, providers, and the system**. Consumer reports are meant to be comprehensive documents that inform consumers and creditors of consumer obligations. The Proposal diminishes the reports' effectiveness and shakes faith in the credit system.
- **The Proposal will broadly harm small businesses, consumers, and the credit system**. The Proposal will unnecessarily complicate the work of accurately collecting validly owed debts. The harms associated with those complications will be passed on to small businesses and consumers.

The included pages provide details regarding the above mentioned comments. ACA appreciates the opportunity to provide comments on the Proposal and is committed to engaging in constructive dialogue to address these, and other, concerns.

Once again, ACA urges DCWP to delay the Proposal's effective date. More time is needed to implement the Proposal's many changes.

Please find attached with this letter ACA's comments regarding the Proposal.

Sincerely,

/s/ Scott Purcell

Scott Purcell
CEO
ACA International

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(continued)

COMMENTS

I. The Proposal's Implementation Period is Impossibly Brief

<u>Provision at Issue</u>: *Section 4. This Rule takes effect October 1, 2025.*

While the New York City Department of Consumer and Worker Protection's ("DCWP") proposed rule—Proposed Amendments to Rules Relating to Debt Collectors ("the Proposal")—contains many areas for comment and improvement, the most concerning issue relates to the impossibly brief implementation period. Comments on the Proposal are due to DCWP on June 10, 2025. That same day, DCWP intends to hold a public hearing to accept oral commentary on the Proposal as well. In accordance with the City Administrative Procedure Act ("CAPA"), DCWP will presumably review all submitted comments and oral testimony, and carefully consider the policy and legal arguments included therein.[5] Needless to say, this process will take time.

Assuming DCWP holds its hearing on June 10, and reviews and addresses public input after that, the earliest possible final rule may be late July.[6] This would be an extremely truncated review of comments, immediately calling into question whether they were given due consideration. A cursory glance at comments, followed by an impossible timeframe of a few weeks to come into compliance creates a number of due process concerns and will cause irreparable damage for regulated entities.

A. Entities Large and Small Must Have Time to Analyze, Program, and Test Systems for Compliance

Several of ACA's members are large, complex institutions with robust legal and compliance teams. These members estimate that the Proposal, as it stands now, would require approximately six months of work to fully review, digest, and implement. For smaller ACA members—those without teams of compliance and legal experts—implementation times will be much longer. Smaller members do not have the resources to revamp policies and procedures upon such quick notice, and may need to hire outside consultants and third party vendors, as well as space out time spent on what might be only one part of their business. Because the implementation period is likely only two months, these members will have no choice but to halt operations until they can afford to comply with the Proposal.

As DCWP is aware, much of the debt collection process is automated and electronically managed and controlled. Often, ACA members will have different vendors for different purposes. For example, one ACA member reports having different vendors for telephony, text messaging, and direct mailing. Each of these communication vendors' procedures must be updated, along with internal review and compliance mechanisms that are meant to review all

[5] City Administrative Procedure Act (CAPA) § 1043(e) ("*After consideration* of the relevant comments presented, the agency may adopt a final rule…") (emphasis added).
[6] ACA notes that in its previous dealings with DCWP, deadlines have frequently been pushed due to staffing, policy, and other issues. For that reason, we assume the final rule would not likely be released until late July or early August. To be clear, ACA has no complaints over DCWP taking extra time to finalize rules. Indeed, ACA fully supports DCWP taking the time to comprehensively consider these issues. The timeline is only relevant insofar that it fails to leave ACA members sufficient time to prepare for the Proposal's effective date.

communications. Staff must be trained in new procedures, and management must take the time to internalize and understand the changes. These updates will take time. ACA members are committed to complying with every applicable law and regulation—but doing so requires care, resources, and time. The Proposal's effective date eliminates the needed time, puts unnecessary strain on resources, and thus makes due care next to impossible.

B. ACA Members Cannot Start Changes Until Rules Are Final

ACA expects DCWP would ask *why not begin the implementation process now, instead of in July or August when the Proposal is final*? The answer is simple. ACA members, as a general rule, do not have the capacity to expend valuable time and resources preparing to comply with a rule that is not yet final and may still change. It is one thing to ask ACA members to comply with *final* laws and regulations. It is an entirely different matter to ask that ACA members initiate expensive compliance with *proposed* laws and regulations from every level of government in the United States. Moreover, only *final* laws and regulations have effect. The purpose of statutes like CAPA is to ensure that required procedures and policies are followed before proposed rules are transformed into final ones. If ACA members must begin complying with government rules before all legal procedures are followed, CAPA is meaningless.

The consequences of the October 1 effective date are likely to be drastic. Some ACA members will need to pause operations. Others may close entirely. **ACA requests that the effective date be delayed, at least, until nine months after the Proposal is made final**.

II. The Proposal's Communications Limitations Are Unreasonable, Unnecessary, and Unlawful

The Proposal promulgates limits on communications that will harm consumers and make the settling of debts more difficult. The Proposal's limits—which are far more restrictive than the federal government's restrictions in Regulation F—impose categorical bans on communications, but only for certain collectors. This discriminatory approach to speech restrictions runs into the protections of the First Amendment.

But regardless of the legal issues with the Proposal, the policy implications are far worse. When consumers know of their debts and obligations, they can take actions to pay and eliminate the debts. That improves the consumer's credit, ensures that creditors are paid, and keeps the credit system moving and service providers timely paid. Because this Proposal inhibits the flow of information to consumers, it should be reconsidered and revised.

A. Definition of Debt Collector

<u>Provision at Issue</u>: *Section 2.*

> *The term [debt collector] does not include:*
> *(1) any officer or employee of the United States, any state or any political subdivision of any Sate to the extent that collecting or attempting to collect any debt owed is in the performance of their official duties;*

(2) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part…

B. The Definition is Underinclusive for First Amendment Purposes

The Proposal strictly limits communications designed to collect consumer debts—but only for certain types of collectors—i.e., for certain types of speakers. Indeed, the Proposal chooses winners and losers in the collection business. The winners (government collectors and public utilities) need not adhere to the Proposal's harsh communications limits. Everyone else (including debt collectors, buyers, and certain original creditors) must adhere to the Proposal's categorical ban on speech (discussed below).

There is no question that vast swaths of the Proposal put time, place, and frequency limits on speech. As a result, those limits must survive scrutiny under the First Amendment. We do not believe it will.

The Proposal does not explain why some collectors must adhere to stricter communication limits than others.[7] From the consumer's point of view, there is no appreciable difference between a call from a utility company versus a call from a creditor versus a call from a third-party debt collector. In all three instances, the consumer receives a phone call, and in all three instances the substance of that call pertains to debt collection.

As a result of the definition of debt collector, the Proposal imposes a ban on a particular category of speech (communication more than three times per week), involving a particular subject matter (options for debt payments), by a particular subset of potential speakers (certain creditors and debt collectors). To survive such a targeted restriction of speech, the Proposal must satisfy a high level of scrutiny under the First Amendment. It cannot. Discriminatory restrictions on speech must be narrowly tailored in service of a compelling government interest.

The Proposal is clearly not narrowly tailored because it leaves out public utilities and government collectors. And any government action that leaves out large sources of the problem, cannot be said to serve a compelling government interest. After all—if the interest was sufficiently compelling, wouldn't the Proposal have endeavored to solve the entire problem, rather than a subset of it?

If the Proposal's definition of debt collector is based on reasoned decision-making or statistical evidence, ACA asks that DCWP make that reasoning and data available immediately. Otherwise, it appears that DCWP's speech limits are unlikely to meet First Amendment scrutiny.

C. Frequency Limitations are Not Narrowly Tailored to Meet a Compelling State Interest

<u>Provision at Issue</u>: Section 3. § 5-77(b)(iii)(A).

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[7] Certainly, ACA recognizes that there are some reasonable justifications to exclude certain entities from communication limits. Lawyers seeking to effectuate service, for example, should not be considered collectors and should not have their communications limited.

> *Excessive frequency means any communication or attempted communication, except communications or attempted communications set forth in item (E) of this subparagraph, made by the debt collector to a consumer by any medium of communication, in connection with the collection of a debt within a seven-consecutive-calendar-day period, either 1) more than three times in total during such period per consumer or 2) any time after the consumer responded to a prior communication within such period.*

D. The Proposal's Communications Limits That Apply to Telephone Connects and Passive Electronic Contacts are Overly Burdensome Restrictions of Speech that Do Not Benefit Consumers

Currently, City law allows for two communications (actual connects) per week—and this excludes attempted communications. The Proposal, subject to some exceptions, restricts contacts more than three (i.e., four or more) communications attempts of any in a seven day period. The rule says that more than three contacts is a *per se* violation of the Proposal. This limit applies both to telephone calls and electronic communications like emails and text messages, but not U.S. mail.[8]

Importantly, the Proposal's limitations are much more restrictive than the federal government's rules in Regulation F. In Regulation F, only telephone calls in excess of the seven communication limit creates a *presumption* of a violation. A collector could defend in court that calls exceeding the limit we permissible by showing that, in fact, they were not designed to harass, abuse, or oppress. Most, critically, the federal presumption only applies to telephone calls, not other channels, such as electronic communications.

The CFPB enacted its rule after years of rulemaking, data gathering, and engaging with consumers and industry. The record in New York, however, does not show any data or evidence that justifies why New York should have a rule that is different from the federal rule.

The differences between Regulation F and the Proposal make clear just how restrictive the Proposal's limits truly are—and shows that other, less restrictive means exist in Regulation F. **ACA asks that DCWP disclose what data and evidence justifies the Proposal's more restrictive frequency rules**. If DCWP has evidence that violations of Regulation F are rampant in the City, or that Regulation F's presumptions are insufficient, ACA would benefit from that information.[9]

1. <u>Evidence shows that federal frequency limits are sufficient</u>

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[8] ACA recognizes and appreciates the exception included in (E)(I) that excludes any communication/attempted communication that is a hard copy communication sent by U.S. mail.

[9] When promulgating Regulation F, the CFPB considered the 7-in-7 limitation, along with other alternatives. The CFPB rejected other, more stringent alternatives for numerous reasons. The CFPB acknowledged that collectors provide consumers valuable information that will lead to the settling of debts and the repair of credit. Alternatively, when consumers receive information about owed debts that are incorrect, consumers are able to take action to repair their credit and defend their identity. DCWP does not appear to have evidence to suggest that the CFPB's conclusions are incorrect. See Notice of Proposed Rulemaking, Docket No. CFPB-2019-0022, 12 CFR Part 1006, accessible here.

Based on publicly available information from the CFPB's Complaint Database, over the last three years, 894 complaints have been filed against collectors for excessive calls, emails, and text messages in the *entire State of New York* (a state with nearly 20 million people).[10] That averages out to less than 300 complaints every year across the entire state. It is difficult to see how less than 300 complaints per year would justify such a restrictive regulation of speech. Beyond this, a large portion of CFPB complaints are mere inquiries and in many instances have been double counted.[11] Thus, the number of actual complaints on this topic is likely significantly less.

2. Inconsistent frequency rules have no empirical evidence to support them

Further, the Proposal adopts different frequency rules for original creditors/collectors and debt buyers. The Proposal calculates frequency separately for each distinct account when the collector is an original creditor or third-party collector, but does not extend the same standard to debt buyers. This creates inconsistent policy across the industry. Putting aside, for a moment, the legal issues with that framework, this will lead to consumer confusion. If debt buyers' communications will be consumer, rather than account, specific, consumers will likely not know which account is being discussed, what the remaining balance is, and when the statute of limitation will expire.

3. The frequency limits violate the First Amendment

Legally, this Proposal violates the First Amendment. At their core, frequency limitations are restrictions on speech. That speech may be commercial, but it is speech—protected by the First Amendment—nonetheless.[12] The Proposal bans a particular category of speech (communications more than three times per week), involving a particular subject matter (options for debt payments), made by a particular subset of speakers (debt collectors). This subject, speaker, and content-based speech discrimination is subject to the highest of scrutiny by the First Amendment. The Proposal does not survive that scrutiny. The Proposal does not serve a compelling government interest (if the interest was compelling, creditors and collectors would be included), nor does it aim to do so by the least restrictive means available (Regulation F is a less restrictive alternative). **ACA urges DCWP to carefully review the Proposal and correct these clear constitutional deficiencies**.

ACA again urges DCWP to disclose what data and evidence it has that justifies the Proposal's stringent limits on communication. Restrictions of speech require justification—DCWP should be clear regarding what those justifications are. Absent any such justifications, **ACA urges DCWP adopt the federal standard of permitting up to seven telephone calls (or attempted telephone calls) per seven-day period**.

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[10] CFPB Complaint Database (statistics pulled 5/14/2025), access here.

[11] Numerous entities, including ACA International, recently wrote to the CFPB to express concerns about the CFPB Complaint Database. The letter noted that numerous groups flood the portal with often inaccurate information, including information developed exclusively by AI. ACA wishes to be clear that the CFPB Complaint Database overcounts complaints and includes routine business inquires and questions in its definition of "complaint." The referenced letter can be accessed here.

[12] Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N. Y., 447 U.S. 557, 566 (1980).

III. Electronic Communications should be Encouraged, not Discouraged

Provision at Issue: Section 3. § 77(b)(5).

> *Unless state or federal law prohibits compliance with this section, a debt collector, in connection with the collection of a debt, must not . . . [c]ontact a New York City consumer by electronic communication to collect or attempt to collect debt unless the debt collector satisfies the following requirements. . . [conditions deleted for brevity].*

The Proposal concerning electronic communications creates a confusing, complex, and counterintuitive electronic communications regime that simply does not aid consumers. The Proposal categorically bans electronic communications unless one of three conditions is met.

- Written Consent. A collector can communicate electronically if that collector obtains consent to do so in writing. Additionally, a collector can electronically communicate with a consumer to obtain written consent after oral consent has already been granted.
- Original Creditors Only. Second, a collector can communicate electronically if that collector is an original creditor who already obtained consent to communicate electronically with the consumer.
- Reciprocal Channel. Third, a collector can communicate electronically with a consumer if that consumer has used an electronic medium to communicate with the collector.

In comparison, the federal rules concerning electronic communications allow all sorts of passive electronic contacts to multiple addresses without limit, and only require affirmative opt-in to receive mandatory federal disclosures electronically pursuant to the e-Sign Act.

A. Consumers Benefit From More Electronic Communication, Not Less

Electronic communication, like texts and emails are better than telephone and mail in many respects. First, they are convenient and accessible:

- Fast and direct: Texts and emails are delivered instantly and can be read at the consumer's convenience.
- Urban lifestyle: NYC residents often have busy schedules and may not be available for phone calls or in-person visits.
- Mobile-first behavior: Many New Yorkers rely heavily on smartphones for communication, making texts and emails more effective.[13]
- Privacy. Direct communication with an individual's mobile device provides privacy and discretion. A discreet text or email is less intrusive than a phone call or mailed letter, especially in shared living spaces or workplaces. The average

[13] See, https://www.nyc.gov/assets/dca/MobileServicesStudy/Research-Brief.pdf (" Relative to national averages, ownership of mobile phones, including smartphones, was higher among New York City survey respondents. Nearly all respondents (95.8 percent) reported owning a cell phone, and 79 percent of cell phone owners had smartphones. In comparison, the Federal Reserve Board's report found that approximately 87 percent of American adults own a cell phone and 71 percent have a smartphone.")

> persons per household in New York City is 2.5, thus mail to residences can often be reviewed by persons other than the debtor. Finally, mailed letters can be misrouted or intercepted. About 10% of New York City residents have not lived in the same residence over one year. This transiency makes U.S. mail communications less reliable than electronic communication.

New York residents prefer low-risk, passive engagement with financial accounts through mobile phones. The New York City Mobile Services Study observed that New Yorkers show, "a strong consumer preference for low-risk, passive engagement with financial accounts through mobile phones. That is, New York City respondents reported being more comfortable receiving electronic messages and alerts as opposed to accessing an application that would require entering new or sensitive data." *Id.* at 2.

Electronic communication also offers control over communication: Consumers can choose when and how to respond, reducing stress and confrontation.

New York City's unique cultural and demographic factors must also be considered in this rulemaking. First, NYC has a high concentration of younger, tech-literate residents who are more comfortable with digital communication. The U.S. Census Bureau reports that 93.8 percent of NewYork City residents live in a household with a computer. Second, over 36 percent of NYC residents are foreign-born persons.[14] Written messages can be translated more easily than spoken ones, aiding non-native English speakers.

B. Electronic Communication is Easier to Monitor and Assess for Compliance

For the DCWP's benefit, emails and text messages enhance documentation and record-keeping, and they create uniformity—which enhances compliance. Emails and texts provide a clear record of communication, which can be useful for tracking payment plans, disputes, or legal matters. Further, consumers can review past messages to understand their obligations or verify agreements.

C. The Proposed Rule Creates Friction to Electronic Communications

This Proposal will make the efficient flow of information more difficult. To begin, permissible electronic communications will often require at least two levels of consent. If a consumer speaks with a collector via telephone call and provides explicit consent to communicate electronically, the collector must follow up that call with a second attempt to obtain written consent. Consumers may ignore that second attempt because they—reasonably—assume that their oral consent is sufficient to opt-in to electronic communications.

Next, DCWP made a significant change in the latest version of the Proposal to allow original creditors to communicate electronically when consumers have already consented to electronic communications. This is a positive first step. If a consumer indicates a desire to communicate electronically in their business dealings, it is perfectly reasonable to assume that the same consumer will wish to communicate electronically in their debt dealings.

[14] See, https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045224.

But it is a curious decision to prohibit consent from transferring from the creditor to the third-party debt collector or debt buyer. From the consumer's perspective, the difference between the creditor and the third-party collector is largely irrelevant. In both situations, the consumer would be receiving communications with information regarding their debts. It is not clear why messages from a third-party collector are materially different. ACA strongly believes that electronic communication consent is less about the creditor or the collector and more about the consumer, meaning that consumers who opt-in for their creditor communications are very likely to also intend to opt-in for their collector communications. Eliminating an extra barrier to efficient communication is good for consumers who—often—wish to obtain information as privately and efficiently as possible.

D. Federal Law Allows Electronic Validation Notices

The Proposal's addition of friction for electronically sending validation notices is highly concerning to ACA. ACA members currently comply with federal regulations that allow validation notices to be sent electronically.[15] These notices reach their intended targets. ACA is aware of no large-scale problem with consumers not receiving their validation notices when delivered electronically. If DCWP is aware of such information, ACA asks that it be published.

This question speaks to a larger issue with the Proposal's aversion to electronic communications. ACA members report that consumers broadly prefer electronic communications (like emails and text messages) over telephone calls or hard copy U.S. mail. Telephone calls can be obnoxious or disruptive while mail can be lost and misplaced. Text messages and emails, by and large, are far more efficient for most consumers.[16] In fact, one ACA member operating in New York State and City reports that not a single consumer has ever indicated that they prefer telephone calls or hard copy U.S. mail over electronic communications. Of course, telephone calls and hard copy U.S. mail can always be an option, but it difficult to see why a 21st Century approach would not prioritize and protect efficient electronic communication.

DCWP must consider what they want to accomplish by creating barriers to electronic communication, we believe the goal itself is conceptually flawed and will harm consumers. **ACA asks that DCWP publish any evidence showing that consumers largely prefer telephone calls or hard copy U.S. mail**. All evidence that ACA has reviewed has indicated just the opposite—that the vast majority of consumers prefer electronic communications that are typically more efficient and less disruptive.

ACA suggests the following changes:

[15] 12 CFR § 1006.34(d)(3)(v)(B). Regulation F also provides how a debt collector "may" format the notice. 12 CFR § 1006.34(d)(4). And federal law generally provides workable procedures for electronic communications. 12 CFR § 1006.6(d)(3).

[16] *Cf. Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Training*, Consumer Financial Protection Bureau and Fors March Group (Feb. 2016), accessible here. The CFPB conducted a years-long study of validation notices and the user experience. Nothing in that report indicated that electronic notices were problematic, and the CFPB eventually chose to *permit* such notices.

1. The Proposal is edited to clarify that oral consent is enough to opt-in to electronic communications, and that ACA members need not follow up oral consent with a request for secondary written consent;
2. The Proposal is edited to clarify that any previously-provided electronic communication consent transfers from the original creditor to the third-party collector when the collector begins collection of the debt;
3. The Proposal is edited to clarify that validation notices may be sent via electronic means, in conformity with Regulation F at the federal level.

These changes would preserve the consumer's right to opt-out or request a different form of communication—thus consumers retain their control over the communication channel but still receive the benefit of private, targeted, and convenient electronic communication.

IV. The Proposal's Employment Communications Limits are Difficult to Understand and Impossible to Follow

Provision at Issue: Section 3. § 5-77(b)(6).

Place of Employment and Work Hours Communications Limitations
Unless state or federal law prohibits compliance with this section, a debt collector, in connection with the collection of a debt, must not . . . [c]ommunicate or attempt to communicate with a consumer at the consumer's place of employment, including a time the debt collector knows or should know is during the consumer's work hours. . .

The proposal to eliminate collections communications during a person's work day has serious First Amendment problems because it broadly restricts certain speech while failing to achieve a narrowly-tailored government goal. It also fails Due Process because it does not provide enough guidance to allow agencies and creditors to comply with the rule.

A. The Work-Time Communication Ban is Overbroad

The FDCPA rule concerning communications at the workplace passes Constitutional muster because it narrowly focused on banning communications that violated the employer's policies: if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication. FDCPA § 805(a)(3). It met the government's goal of protecting employees' job security by preventing situations where the employee may get in trouble due to a collector's actions.

The current proposal, however, does not appear to have a valid governmental purpose. New York City residents are already protected from communications that violate employer policies by the FDCPA § 805(a)(3). 12 CFR § 1006.6(b)(3) ("a debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt at the consumer's place of employment, if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication"). What additional government purpose—other than restriction of speech—does the government seek to attain? The goal of restricting communication merely to make it harder to share a message is a First Amendment violation.

Second, the proposal raises Due Process issues because it is impossibly hard to implement. Previous iterations of this provision left out the "work hours" clause and instead focused only on prohibiting communications while the consumer is at their place of employment.[17] ACA informed DCWP officials that it believed this provision was too broad, unclear, and invited illogical results. For example, the provision suggests a violation if a consumer was at their home office and received a telephone call on their mobile phone during their working hours. Under one reading, it might also be a violation to call an Uber Eats driver on their mobile phone as they delivered food. This is nonsensical and asks ACA members to deduce when, how, and where consumers might be working with little to no information. And when ACA members guess incorrectly, they will be subject to costly and unpredictable litigation.

The addition of the "work hours" clause does not cure the place of employment issue and indeed invites more uncertainty. Under ACA's reading, the "work hours" clause might prohibit any communications during the normal 9AM-5PM window because, perhaps, ACA members "should know" that *most* employees work 9AM-5PM. But is that always true? If a consumer is, for example, an Uber Eats driver, should ACA members be required to assume that they cannot call the consumer during dinner hours—when the driver might be driving meals around the City—but that they can call the consumer between 9AM-5PM? The "work hours" clause invites these questions. The lack of answers in the Proposal means that the answers will ultimately come through costly and damaging litigation.[18]

ACA asks that this "work hours" language be deleted and the Proposal mirror Regulation F.

B. Work-Provided Telephone Numbers and Email Addresses

Provision at Issue: Section 3. § 5-77(b)(6).

Unless state or federal law prohibits compliance with this section, a debt collector, in connection with the collection of a debt, must not . . . communicate or attempt to communicate with a consumer . . . by sending an electronic message to an email address or a text message or call to a phone number that the debt collector knows or should know is provided by the consumer by the consumer's employer.

Again, ACA believes this rule is an overbroad restriction of speech with no legitimate governmental interest. Employees' job security is already protected by the provisions at federal law. Consumers already have the right to restrict any communication channel of their choosing—including communications on certain emails, phone numbers, and the like. The current proposal simply adds a barrier to speech that does not appear to have a legitimate government purpose or interest.

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[17] Previous provision prohibited communications "at the consumer's place of employment, including by sending an electronic message to an email address or a text message number that the debt collector knows or should know is provided to the consumer by the consumer's employer."

[18] Of course, when a consumer informs an ACA member that they work a specific set of hours in a specific location, it is far easier to tailor communications to avoid interrupting the consumer's work. But for all other consumer communications, this provision asks ACA members to engage in a guessing game. When ACA members guess wrong, they will be subject to litigation.

Second, the Proposal has practical problems. Principally, the Proposal invites ACA members to guess whether emails and phone numbers are work-provided or personal. In most instances, ACA members have little evidence to rely on. There is no database of business/commercial telephone numbers versus residential/personal ones. Unless a consumer at some point has indicated that a telephone number is a work number, ACA members have no way of knowing that a number is business/commercial. Similarly, there is no database of business/commercial emails versus residential/personal emails.

C. The CFPB Rejected a Similar Framework

In promulgating Regulation F, the CFPB rejected a similar framework, explaining that it would be cumbersome, inaccurate, and potentially contrary to consumer preferences:

> *"Reviewing domain names is a labor-intensive and manual process, as well as insufficient to determine whether an address is employer provided. For example, a ''.edu'' domain name may indicate that a consumer is either a student or an employee of an educational institution. According to these commenters, because it is difficult to distinguish employer provided email addresses from personal ones, excluding employer-provided email addresses from the notice-and-opt-out procedures would create an implementation problem that would discourage debt collectors from using the procedures, thus stifling electronic communications and harming consumers.*
>
> *In addition to these operational concerns, industry commenters noted that consumers often disclose employer provided email addresses to creditors, including on account-opening documents. According to these commenters, a consumer who has disclosed an employer-provided email address to a creditor has chosen to communicate about the account by email, and that choice should be honored even after the account is transferred to a debt collector.*
>
> *Conversely, these commenters argued, a consumer who does not want to receive debt collection communications on an employer-provided email account can decline to provide the creditor with such an email address." 85 Fed. Reg 76,787 (Nov. 30, 2020).*

Aside from there being no way to actually implement this limitation, there is simply no need for this provision. ACA members report they rarely—if ever—receive complaints from consumers concerning telephone calls or emails at the workplace. This is likely because consumers already have the right to request communications at particular times via preferred methods. Additionally, the frequency of their communications, regardless of where the consumer is located, is already limited by Regulation F. In other words, there is simply no risk that a consumer will receive dozens or hundreds of messages while at work because there are general frequency limitations already imposed.

ACA asks that that this provision mirror federal law and DCWP clarify that collectors need not guess whether specific phone numbers or email addresses are work-related.

V. The Proposal's Notice Requirements Are Confusing, Inaccurate, and Conflict With State And Federal Law

A. Credit Reporting Notice

<u>Provision at Issue</u>: Section 3. § 5-77(e)(10).

> *A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes: furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector* ***has sent to the consumer in the medium of communication used to collect the debt, and sent a written copy to the consumer via U.S. mail or other delivery service, a notice that states****, clearly and conspicuously, that the information about the debt* ***will be reported*** *to a consumer reporting agency and has waited 14 consecutive days after sending such notice. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this paragraph.*

The Proposal's notice requirements are confusing, require the communication of inaccurate information, and directly conflict with state and federal law. ACA is committed to communicating accurate, helpful information to consumers. The Proposal makes that work more difficult. Minor, but important, changes are needed.

The Proposal requires that collectors state "clearly and conspicuously, that the information about the debt <u>will be</u> reported to a consumer reporting agency….". No federal or state law requires the furnishing of consumer report information. In fact, the model notice language set forth by the CFPB is directly at odds with this requirement: "[w]e <u>*may*</u> report information about your account to credit bureaus ….."). Appendix B of 12 CFR Part 1022, FCRA 623(a)(7) (emphasis added). In accordance with the FCRA and similar to the CFPB's suggested language, ACA members, as well as others in the industry, use "may" and provide this or a similar notice already in their validation notice. This is because, under federal law, furnishing account information to a credit reporting agency is an entirely voluntary activity.

The Fair Credit Reporting Act only governs activities once a furnisher determines to undertake reporting. For any number of reasons, debt may not be reported to an agency, including if the customer pays, the customer disputes, or for collector business purposes. Between the time when the notice is sent with "will report" language, and when the information is reported to a CRA, intervening actions (like payment or a complaint) may occur and result in a change of position regarding credit reporting. The Proposal makes no room for these scenarios and effectively requires a statement that may at times inform consumers of inaccurate information. This puts consumers in unnecessary stress.

This is not an abstract problem. The "will" versus "may" language is frequently the subject of litigation.[19] To avoid unnecessary litigation that is expensive for both ACA members and consumers, ACA asks that the credit reporting language be brought in line with federal law. ACA appreciates that DCWP removed the "will" language requirement from the validation notice, but more changes are needed. ACA requests that the "will" language be edited to "may" to better reflect the universe of options ACA members have when reporting consumer debts to CRAs.

Additionally, ACA notes that the addition of the "medium of communication" clause is unnecessary and will add more confusion, specifically as it pertains to telephone calls. ACA asks that this provision be struck.

B. New York City Validation Notice

Provision at Issue: Section 3. § 5-77(f)(1).

> *Within five days after the initial communication with a New York City consumer. . . a debt collector must send the consumer a written notice. . . [omitted]*

The Proposal's required validation notice text—along with the Proposal's substantive validation rules—presents significant (and unnecessary) problems for ACA members. To begin, the Proposal persists in its conflation of several key terms. *Validation period* is a term of art that, under federal law, ends 30-days after the initial communication regarding the debt. During that period, if a consumer disputes a debt, the collector must cease collection until the collector provides *verification* of the debt. In other words, *verification* only occurs when a debt is disputed within the 30-day validation period. The Proposal, however, allows consumers to—at any time, even outside of the validation period—dispute a debt and then require collectors to verify the debt. This process is laid out in the Proposal's required validation notice statement.

Additionally, the model validation notice provided by the CFPB is protected by a safe harbor provision. That provision states that if the model notice is used, the collector is protected by the safe harbor rule. The Proposal's additional text arguably violates that safe harbor.

ACA suspects that the Proposal is attempting to bring its rules in line with the State's substantiation rules (which state that collectors cannot collect a debt until substantiation is provided). But critically, the State rules do not require notice language that conflicts with the federal model notice, nor do the State rules refer to the response as *verification*.

If DCWP wishes to require collectors to provide certain documentation upon a dispute *outside of the validation period*, ACA would suggest that DCWP look to the State's already existing substantiation rules. Those State rules require that collectors provide information in response to the dispute, but do not require *verification*, which is a separate form and process.

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[19] *See, e.g., Sabel v. Halsted Fin. Servs*., LLC, 2020 WL 6274986 (S.D.N.Y. 2020); *Echols v. Congress Collection,* 2021 WL 3510934 (E.D. Mich. 2021); *Sandoval v. Midland Funding,* 2024 WL 3050737 (N.J. Super. Ct. 2024), Pantoja v. PRA, 852 F.3d 679 (7th Cir. 2017).

ACA asks that the first two bullet points included in § 5-77(f)(1)(iv) are struck from the Proposal and the substantiation rules are modeled after New York State law.

VI. The Proposal's Verification Rules Conflate Effective Dates And Result In Unlawful Takings

A. Verification Timing Issues

<u>Provision at Issue</u>: Section 3. § 5-77(f)(7).

> *For accounts where a validation notice is required to be sent pursuant to paragraph (1) of this subdivision on or after October 1, 2025, excluding those accounts purchased before October 1, 2025. . . [omitted]*

The Proposal's verification rules require additional analysis and review by DCWP. First, the rules related to the verification notice and the substantive verification rules are on different timelines that will confuse consumers. *Second*, the Proposal's verification rules will result in an unlawful taking of collector's property rights with no compensation.

Under ACA's reading of the Proposal, collectors must begin sending notices according to the Proposal's mandatory text beginning October 1, 2025. Subsection (f)(1) states that notices need not be sent if the initial communication came before October 1, 2025. At the same time, (f)(7) appears to specify that the section applies only to debt purchased *after* October 1, 2025. In other words, accounts purchased before October 1, 2025 are excluded from the verification requirements included in this section—but those same accounts may receive a notice with contrary information because those notices must be sent starting October 1, 2025.

As a result, consumers could receive a validation notice with the required language while the text of (f)(7) indicates that debts purchased before October 1, 2025 are excluded from the requirements. This would, of course, create unnecessary confusion.

This can be easily resolved by striking the first two bullet points included in § 5-77(f)(1)(iv) and bringing the Proposal in line with state substantiation rules.

More fundamentally, ACA urges DCWP to carefully review the Proposal and to take the needed time to craft a coherent Proposal without such inconsistencies. Inconsistencies such as these illustrate why ACA members will struggle to implement this Proposal in the short timeline currently allotted.

Additionally, § 5-77(f)(7)(i) added language requiring that the written verification must be provided "within the time period permitted by state law, no later than 60 days." This is not the same as the notice requirements in (f)(1)(iv), which specifically states within "60 days." As was previously discussed, many of these issues could be solved by carefully reviewing the Proposal and eliminating cross references to various terms of art (like verification). In a field as heavily regulated as debt collection, extraneous words (and inadvertent cross references) can lead to expensive and ultimately unnecessary litigation. **ACA respectfully asks that the Proposal is carefully reviewed in light of these comments**.

B. Unverified Debt and Required Notice

Provision at Issue: Section 3. § 5-77(f)(7)(iii).

> *If a debt collector, other than original creditor, does not send the consumer verification of the debt within the required period, it cannot resume collection activity on the debt and must mail a notice of unverified debt to the consumer in accordance with paragraph (8) of this subdivision…*

The Proposal *§ 5-77(f)(7)(iii)* creates an Unconstitutional taking of contractual rights. It adds new language that extinguishes contractual rights of collectors who cannot verify debt within the required 60-day period.

To exacerbate the Unconstitutional problems, unlike previous versions, the Proposal now treats collectors and debt buyers differently from original creditors. Previously, when a collector, debt buyer, or original creditor failed to verify a debt within the (previous) 45-day period, the entity could not resume collection activity ever again. In effect, the Proposal extinguished contractual property rights and offered no process by which to avoid this taking. Nothing in this or previous versions of the Proposal indicated that collectors, debt buyers, or original creditors would ever be compensated by the City for this loss of property rights.

ACA raised this issue to DCWP officials both through comments and litigation. DCWP appears to have taken this issue to heart and provided a fix—but *only* for original creditors. Under the current Proposal, original creditors must (like collectors and debt buyers) cease collection activity when verification cannot be provided. But unlike collectors and debt buyers, original creditors do not then lose the right to collect on the debt entirely. For example, consider two potential collectors, one a third-party debt buyer and the other an original creditor. Neither entity can verify the debt within the 60-day period. But on day 61, both entities obtain the required documents to properly verify the debt. The third-party debt buyer cannot then resume collection—instead, that entity must send a Notice of Unverified Debt that states collection will not continue. But the original creditor must only send a notice that says collection will cease until verification can be provided. Once that verification is provided, the original creditor can resume collection.

There are numerous problems with this framework, the principal being that collectors and third-party collectors have their right to collect on valid debts terminated.[20] Often, entities like debt buyers may actually *own* the debts that the Proposal is now extinguishing. The government cannot destroy a property right without compensating the entity; and that is exactly what the Proposal purports to do here.

[20] Separately, it is critical to note that the federal rule does not dictate the content of a debt verification. *See* 12 C.F.R. 1006.38(d). Rather, it allows for all reasonable records and media to verify a debt. This is essential because the proscriptive method included in the Proposal is not applicable to many types of past due obligations. For example, an unpaid invoice for damages to a rented apartment would not generate any of the documents required by the Proposal.

The unlawful nature of this scheme is more fully illustrated when one understands that consumers are entirely unaided by this system. The following hypothetical illustrates the problem. If any one collector fails to comply with the verification requirement in 60 days, that collector can no longer collect on the debt. But if the debt is later placed with another collector, that second collector can collect upon later verification. The 60-day period is irrelevant. It only applies to the original collector; the debt will still be collected, just later and by a different entity. It is hard to see how this lack of efficiency helps consumers. If consumers are not aided by this provision—and instead the provision is driven by an animus against collectors and debt buyers—the provision will not pass Constitutional muster.

ACA asks that collectors and debt buyers be treated the same as original creditors and the provision is edited to allow collectors and buyers to cure verification issues.

C. The Proposal's Time-Barred Debt Rules Obfuscate Clear Rules And Will Only Confuse Consumers

Provision at Issue: Section 3. § 5-77(i)(5).

> *A debt collector must include substantially the same time-barred debt disclosure as the disclosure contained in paragraph (2) of this subdivision in every permitted communication . . .*

At the outset, ACA understands the purposes behind the Proposal's time-barred debt rules. Consumers have a right to know that time-barred debts (while subject to *collection*) are not subject to *litigation*. That point should be crystal clear for consumers. But the Proposal's provisions for mandatory written follow-up and a waiting period before payment deprive consumers of choice, and risk causing confusion.

Some aspects of the Proposal's time-barred debt rules create unnecessary uncertainty and will inspire a barrage of communications that will only confuse consumers and cause delays that could ultimately harm consumers.

First, we note the current Proposal is improved from previous versions. The Proposal now requires that collectors "must include substantially the same time-barred debt disclosure" as is required in the initial time-barred disclosure in all permitted communications. Functionally speaking, this means that every communication that consumers receive from collectors of a time-barred account will include the time-barred debt notice. ACA believes that this requirement, while incredibly redundant, should eliminate some of the Proposal's other time-barred notice requirements.

Because the time-barred debt notice will now be so ubiquitous to New Yorkers, the additional problematic aspects of the time-barred debt proposal should be removed, specifically (a) requirement to re-disclose in writing after having already provided that notice verbally; and (b) the 14-day waiting period after disclosure before the account can be resolved.

1. Problem with the mandatory written disclosure after a verbal disclosure

- Unnecessary Delay: imagine a consumer finally decides to clean up her credit history to prepare for borrowing. The consumer reaches out to the collector to resolve the account, but is told she cannot pay. The consumer wishes to repay the debt as soon as possible. But this provision appears to mandate that before the payment can be accepted, the consumer must first receive a notice with the disclosure—despite the consumer already agreeing to pay, and indeed wanting to pay as fast as possible.
- Confusion. Requiring redelivery in writing of a message previously delivered verbally is potentially confusing for consumers. This is especially true depending on the nature of the conversation. If a consumer has agreed to pay, or if a large number of questions were answered and concerns cleared up, the subsequent written message is likely to confuse consumers. The subsequent written communication implies that the verbal message (and potential agreement) is not valid, which, of course, is not true.[21] Consumers and collectors share information and come to agreements verbally every day. There is no reason to shake consumers' confidence in a previous agreement.
- Disruption of in-place payment plans. In many situations, a consumer may be on a long-standing payment plan when a debt finally becomes time-barred. The Proposal now requires that any subsequent communications contain the time-barred notice—but this notice will be confusing. The notice states that "this debt expired." That is not true. A time-barred debt has *not* expired. The debt remains valid. Instead, the statute of limitations to sue on that debt has expired. There is a material difference and consumers should not be misled.

The process of debt collection is often overwhelming for consumers. It is in everyone's best interest to make the process as clear and efficient as possible. A deluge of notices—all stating the same thing, time and time again—is not effective.

Finally, the NYC time-barred debt notice language is wrong. The notice states that "this debt expired." That is not true. A time-barred debt has *not* expired. The debt remains valid. Instead, the statute of limitations to sue on that debt has expired. There is a material difference and consumers should not be misled.

ACA requests that the Proposal is edited to remove the requirement that the time-barred notice be redelivered in writing after verbal delivery, remove the requirement of a stand-alone notice in light of the fact that all permitted communications must contain the same notice, and revise the standard notice to state that while the statute of limitations may have expired, the debt has not.

VII. The Proposal's Judgment Enforcement Rules Unlawfully Limit Validity Of Court Judgments

Provision at Issue: Section 3. § 5-77(f)(7)(vi).

> *Notwithstanding the foregoing, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt.*

[21] Additionally, it is unclear how this provision interacts with other legal requirements. For example, if a consumers asks not to be contacted via U.S. mail, and thus prefers telephone conversations, must collectors violate that instruction and still send a time-barred notice via U.S. mail?

The Proposal prohibits ACA members from enforcing a validly issued default judgment against a City resident if it does not also have additional verification information that includes a copy of the original credit agreement. This provision has two significant problems. First, the Proposal diminishes the value of a previously entered default judgment, thus diminishing the authority of the courts. Second, the types of documents the rule requires (in addition to a valid court order) may not exist.

A. Constitutional Concerns Exist With the Rule as Written

The Proposal diminishes the value of a previously entered default judgment and imposes new verification requirements on licensees. The verification documents must include:

> *(A) a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the originating creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge- off account statement, the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation;*
>
> *(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;*
>
> *(C) the final account statement or charge-off statement, or other such document that reflects the total outstanding balance alleged to be owed, that was provided to the consumer on or before the charge-off date and prior to the institution of debt collection procedures…*

These new requirements are only a consumer protection if the purpose is to prevent debt collection. But preventing creditors from enforcing legal property rights is not the role of a city agency.

At a basic level, a litigant can only receive a default judgment if it has evidence of the underlying obligation. Moreover, the presence of a default judgment illustrates that a court has reviewed the evidence and ruled on it. There is nothing left to litigate.

Because the "verification" documentation is unnecessary once a judgment of any kind is entered by a court, many creditors and licensees purge the documentation from their files. Creditors follow federal law, which may require them to maintain documents for as little as two years. Firms will typically destroy documents after seven years pursuant to contractual document retention policies with the creditors.

1. <u>This Proposal is likely Unconstitutional</u>

Beyond the judgment rule's clear policy deficiencies, the Proposal also violates the First Amendment. All entities—ACA members included—have the First Amendment right to access courts and seek redress of grievances.[22] The Proposal restricts access to courts because it holds that a valid, final judgment of a debtor's default of debt is not enough to seek enforcement in the City. Instead, a potential debt collector must obtain a slew of original credit documents to accompany the valid, final judgment. The otherwise valid court judgment is ineffective. This diminishment of court judgments renders the courts subservient to this Proposal and clearly infringes on the First Amendment right to have *courts* redress grievances.

Worse still, the Proposal is discriminatory in how it diminishes court access. The restriction excludes government employees and public utility staff. Access to the courts is thus restricted and regulated based on the identity of the petitioner. Such a speaker-based restriction is antithetical to First Amendment principles and triggers heightened review—which the Proposal cannot satisfy.

The Proposal also negates the power vested to the New York State judiciary to award judgments upon a party's failure to appear in an action. It is industry practice when enforcing default judgments to comply with Civil Practice Law and Rules ("CPLR") 3215 concerning the enforcement of default judgments. Furthermore, 22 N.Y.C.R.R. §§ 202.27-a and 202.27-b govern the proof needed to obtain a default judgment in a consumer credit transaction matter. "The general rule under New York and federal law is that a debt created by contract merges with a judgment entered on that contract, so the contract debt is extinguished and only the judgment debt survives."[23] The City is therefore "taking" a property right from ACA members by requiring that the extinguished contract or parts thereof have to be evidenced in order to proceed with recovery of a judgment that was validly entered by the courts of this or any other state.

2. <u>Some documents required by this rule may not exist</u>

Finally, complying with this rule may be an impossible task in many common situations. For healthcare debt, for example, there is often no credit contract. In an emergency, the patient is treated without an agreement. Also, there are not separate agreements between physician providers and consumers. There may be an institutional agreement, but often a physician is not a party to the contract. Other examples include unpaid invoices for damages to a rented apartment.

Aside from impacting ACA members' property rights and violating the First Amendment, the Proposal adds cost and friction to a litigation process that is already expensive and inefficient. The expense and inefficiency is bad for ACA members, bad for consumers, and bad for the market as a whole. **ACA requests that valid court judgments be considered sufficient to verify a consumer's debt**.

VIII. The Proposal Will Disrupt the Credit System by Prohibiting the Credit Reporting of Medical Debts

[22] Bill Johnson's Rests., Inc. v. NLRB, 461 U.S. 731, 741 (1983) (citing California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 511 (1972)).
[23] *Westinghouse Credit Corp. v. D Urso*, 371 F 3rd 96, 102 (2d Cir 2004).

Provision at Issue: Section 3. § 5-77(f)(11)(i).

> *In connection with the collection of alleged medical debt from a New York City consumer, a debt collector is prohibited from [f]urnishing any information on any portion of a medical debt to a consumer reporting agency.*

The Proposal bans debt collectors from reporting information about medical debt accounts to a consumer reporting agency. This provision restricts truthful information about past-due medical debt between a collector and a credit reporting agency. Federal law currently does not prevent debt collectors from furnishing information about medical debt accounts to credit reporting agencies. However, New York State law does prevent such reporting. N.Y. Pub. Health Law § 4926. ACA believes both the New York State law and the Proposal violate the First Amendment and dampen confidence in the credit ecosystem. See *ACA Int'l v. CFPB*, Case No. 4:25-cv-00094 Plaintiffs' ACA International and Specialized Collection Systems, Inc.'s Motion on Application For Preliminary Injunction (S.D. Tex. filed Jan 24, 2025).

This provision has drastic impacts on ACA members. For example, when the New York State law went into effect, one collector's revenue dropped by half (50%). That collector lost a client (a hospital) who determined that they would be better off collecting the debt themselves. Practically speaking, the state and city's laws mean that unregulated, unlicensed original creditors will revert to the collection of medical debt. DCWP will lose its ability to regulate licensees and set clear rules regarding debt collection.

As more thoroughly set forth in ACA's motion for preliminary injunction (incorporated herein by reference) inhibiting the truthful flow of information about medical debt is bad for patients, doctors, and society in general. It violates the First Amendment, and it is preempted by the Fair Credit Reporting Act.

Moreover, NYC's rule is duplicative of the state-level rule and merely invites NYC to be the subject of litigation, instead of the state. **Therefore, ACA requests that the Proposal not prohibit the reporting of medical debt**.

IX. The Proposal's Record Requirements Are Impossible To Implement And Counterproductive

Provision at Issue: Section 1. § 2-193(b)(2).

> *A debt collection agency must maintain the following records . . . Recordings of all oral communications, including limited content messages, with all New York City consumers . . .*

Federal law does not require collectors to record limited content messages. The Proposal's requirement that collectors do so for City consumers is cumbersome and counterproductive.

The burden of recording limited-content messages is very high. Many collection agencies use a predictive dialing device that does not have the capability to record answering machine messages. Typically, these devices only record live communication. In other words, many devices could record a live conversation between a collector and a consumer, but could not record the automated message left to a consumer's voicemail (if the call is not answered by the consumer). Thus, recording limited-content messages will be an expensive addition in terms of programming and volume of calls retained.

In addition, there is limited use for these recordings because they are all scripted and all the same. It is as useful for the DCWP to have one representative copy of a limited-content message as it is for them to have all recordings of what is essentially the same message.

If collectors, as a result of the Proposal's impossible-to-implement recordkeeping requirements, cannot leave messages, collectors will need to increase their number of calls to consumers. Instead of being able to reach consumers through a message left to an answering machine or voicemail, collector's only option will be to call until they speak directly with a consumer.

Combined with the Proposal's frequency limits, collectors will undoubtedly be forced to turn to litigation faster and with more frequently. That is bad for consumers, collectors, businesses, and the credit system. **ACA asks that this requirement be struck from the Proposal**.

X. The Proposal Will Harm Small Businesses, Consumers, And The Credit System As A Whole

Ultimately, the Proposal is bad policy that will harm small businesses, consumers, and the City's credit system as a whole. The only parties who may benefit from this rule are plaintiff class action attorneys, who will use this Proposal as a persuasive basis for lawsuits that leach money from the credit system and hard working New York City service providers.

Various portions of the Proposal lack clarity, require disclosures that arguably conflict with federal law, or severely depress the likelihood that consumers will receive important information regarding their debts. For ACA members in particular, this Proposal will complicate the work of accurately collecting validly owed debts.

The debt collection industry plays a critical role in ensuring that businesses are paid, consumers can access credit and services, and the credit system operates as intended. ACA members work with businesses, large and small, to obtain payment for goods and services already received by consumers. Collectors recover billions in unpaid debts annually. Without an effective collection process, the economic viability of many businesses and the American economy is threatened. Recovering rightfully-owed consumer debt enables businesses to survive, helps prevent job losses, maintains the credit system, and reduces the need for tax increases to cover governmental budget shortfalls. In other words: collection is critical.

When collection becomes difficult, businesses and consumers both lose. Small businesses in particular often rely on the collection industry to sustain their enterprises. Debt collection agencies are, effectively, extensions of small businesses across the country. When small businesses with tight margins are not paid for services performed or goods delivered, these businesses cannot simply write off the losses. Instead, small businesses often turn to collection agencies to recoup some (or all) of their losses. This capacity to collect on *validly owed debts* is often the difference between life and death for small businesses across the country. Anything—this Proposal included—that unnecessarily complicates collection is a threat to the City's small businesses.

Consumers will ultimately bear the unfortunate brunt of the impacts of the Proposal. *First*, consumers who pay their debts and meet their obligations will effectively subsidize consumers who do not. When collection is complicated, interrupted, or even made impossible, businesses will not react by simply eating the lost costs. They will react as rational market participants and raise prices for everyone. At a time when prices remain stubbornly high, this Proposal will only *drive prices up*. This is bad for the economy and fundamentally unfair for the City's residents who pay their bills week after week, month after month.

Second, the credit system as a whole will react to depressed collection by restricting access to credit or services before payment. Again—when businesses in a capitalistic system lose money, they will react in rational, market-driven ways. Entities that extend credit without the backstop of reliable collection activities will have significant incentives to restrict access to that credit. Consumers (predominately low-income, low-credit score consumers) will quickly lose access to credit. When consumers who rely on credit lose access to that credit, the economy will slow.

A. While the economic implications discussed above are the likely and logical outcomes flowing from the Proposal, DCWP need not take ACA's word for it. Academic studies have confirmed this result.

This includes a study concluding that lax collection efforts will reduce the supply of lending to all consumers, especially higher-risk borrowers:

> *In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus, excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity influences on both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers.*[24]

Taken as a whole, the Proposal's main thrust is to shield consumers from as many communications from debt collectors as is possible. But while DCWP may (or may not) have the authority to shield consumers from communications, DCWP does *not* have the authority to shield consumers from their validly owed debts. Regardless of whether or not consumers receive information from ACA members, they will *still* owe their debts. The question is only whether or not consumers will have all the information needed to pay those debts.

ACA's position is that consumers deserve that information. They deserve that information to come in the most effective, efficient medium possible—and they deserve information that is clear, accurate, and easy to understand. ACA appreciates DCWP's good faith effort in this

[24] Todd Zywicki, The Law of Economics of Consumer Debt Collection and its Regulation, 28 Loy. L. Rev. 187 (2016).

Proposal, and certainly, ACA appreciates the improvements already made, but there is still more work to do.

ACA requests that this Proposal be reconsidered, with input from consumers, industry, and all other stakeholders. In the meantime, the Proposal's effective date must be delayed while a comprehensive review is conducted.

From:	Eric Najork
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] CBHV Comments to Proposed Further Amendments of Debt Collector Rules
Date:	Tuesday, June 10, 2025 7:22:31 AM
Attachments:	image001.png DCWP - CBHV comments hearing June 10 2025.pdf

You don't often get email from eric@cbhv.com. Learn why this is important

CAUTION! EXTERNAL SENDER. Never click on links or open attachments if sender is unknown, and never provide user ID or password. If **suspicious**, report this email by hitting the **Phish Alert Button**. If the button is unavailable or you are on a mobile device, forward as an attachment to phish@oti.nyc.gov.

Good mornings,

I hope all is well. See CBHV's attached comments to the proposed further amendments of debt collector rules. Please confirm receipt. Thank you.

Sincerely,

Eric S. Najork
President

CBHV Collection Bureau of the Hudson Valley, Inc.
An ACA International BQMS Certified Agency
A SSAE 18 SOC 1 Type 2 & PCI Compliant Company
PO BOX 831 - 155 N Plank Road
Newburgh, NY 12550
[redacted]

CBHV Collection Bureau Hudson Valley
Trusted Since 1974

June 6, 2025

Department of Consumer Affairs and Worker Protection (DCWP)
42 Broadway
New York, NY 10004

Re: Further Amendments of Debt Collector Rules

Dear DCWP,

My name is Eric Najork, and I am the president of CBHV and the Vice President and 20-year board member of the New York State Collectors Association (NYSCA). CBHV is a third-party debt collector that has the good fortune of representing hundreds of clients throughout the country with a high concentration in the Metro New York City area. Our clients and CBHV treat past due consumers, students, and patients with respect and the utmost professionalism. The NYSCA represents approximately eighty-five collection agencies across the state and are also members of the trade association, ACA International.

There are a variety of issues with the proposed new rules, but my largest concern is the variance between the federal rule Regulation F "Reg F") and the law it is implemented under, the Fair Debt Collection Practices Act, compared to the vastly more expansive proposed DCWP rules. Regulation F was formulated in a bipartisan fashion after more than a 10-year period, which included research and several opportunities for public comment and discussion. Reg F went into effect on November 30, 2021. These rules have worked well both for the consumer and business. It balances important consumer protections with the need for information to be communicated in more modern modes of communication, such as texting and email. The DCWP restrictions on these modern and convenient methods of communication are specifically one of the biggest concerns with the new rules. This will do more harm, than actually help consumers when they do not receive information, they need to make informed choices to protect their financial health. The following bullet points are why these restrictions are bad for consumers and creditors:

- Consumers want to communicate digitally. It is more convenient for them to respond or read a message when works best for them and it keeps the cost of credit down by being more efficient for business. If the consumer does not want to communicate with a specific creditor or collection agency all they have to do is simply opt out.
- Traditional mail is slower and not as dependable as it was in the past, especially in NYC. Many New York City residents move frequently; an email or mobile number typically stays the same. (As of 2023, New York City had 3,705,000 total housing units. Of these units, 1,109,000 are owner-occupied and 2,324,000 are renter-occupied.)

- Mail is only one, are arguably the least relied upon method of communication for the younger generation. Not only have they in many instances moved beyond snail mail, email and texting are now only part of the way they receive digital information. DCWP should be looking to the future not the past. Concerningly, DCWP has presented no data to show they have studied NYC resident's preferred method of communications.
- Agencies need to be able to send more than one digital communication. It is common sense that not every email is caught or read, and it is a busy word with many distractions, there is no data presented by DCWP about why only one attempt would benefit consumers. Alternatively, if a consumer does not receive the information they need, creditors are then forced to move on to more involved forms of collection such as litigation or credit reporting.
- The CFPB has already provided appropriate guardrails and protections for digital communications. There is no need for more restrictive, localized rules that conflict with federal standards and create confusion regarding compliance for both consumers and agencies alike.
- Digital communication is less costly and more sustainable. This reduces operating costs for agencies, who ultimately pass the savings onto our healthcare, utility, and telecom clients to name a few. Paper mailings are significantly more expensive and wasteful compared to digital outreach.
- Technology promotes inclusivity. Digital communications allow consumers to communicate on their schedule and in a manner that is least restrictive to their abilities. Caregivers, people working multiple jobs, or people with disabilities may find traditional phone calls more difficult than communication via email or text.

Restricting digital communication hurts the very consumers the DCWP is trying to help. We urge you to consider mirroring the contact and communication rules under Regulation F to the new debt collection rules.

Thank you for your time and the opportunity to speak at this hearing.

Eric Najork
CBHV, President
NYSCA, VP

From:	Missy Meggison
To:	rulecomments (DCWP)
Cc:	Missy Meggison
Subject:	[EXTERNAL] Comment- DCWP Proposed Amendments to Rules Relating to Debt Collectors
Date:	Monday, June 9, 2025 2:40:28 PM
Attachments:	NYC Rules - CRC comment 6.9.25.pdf

Hello-

I am submitting the attached comment regarding the Proposed Amendments to Rules Relating to Debt Collectors on behalf of the Consumer Relations Consortium. Should you have any issues with the attachment, please let me know.

Missy Meggison
General Counsel & Director, Auriemma Roundtables

[redacted] | www.roundtables.us | Privacy

*My working hours may not be your working hours. Please do not feel obligated to respond outside of your working hours.

June 9, 2025

Re: DCWP Proposed Amendments to Rules Relating to Debt Collectors

To: Department of Consumer and Worker Protection
By Email to Rulecomments@dcwp.nyc.gov

Comment to Proposed Amendment to Rules relating to Debt Collection;

The Consumer Relations Consortium (CRC) is an organization comprised of approximately 40 national companies representing creditors, data and technology providers, and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors, and debt collectors—and challenges them to move beyond talking points. The CRC focuses on fashioning real-world solutions that seek to improve the consumer's experience during the debt collection process. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities, and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

"Consumer protection and debt collection are not mutually exclusive ideas; they can, *and should,* co-exist."

The ability for debt collectors to effectively communicate with consumers is fundamental to their business approach, and to supporting good consumer outcomes. Where a debt collector's ability to communicate with consumers is restricted, legal action becomes more likely, increasing costs for businesses and the consumers who must ultimately pay those costs.

The rules must support open communication between debt collectors and consumers, including through the digital channels many consumers prefer to use. It is critical that the Rules, designed to protect consumers, have their intended effect, and promote good consumer outcomes.

Failure to provide consumers with a variety of acceptable communication channels or otherwise restricting the collectors' ability to reach consumers creates a higher likelihood of negative outcomes that may have otherwise been avoided. These include implantation of credit reporting or worse, accelerating recovery through litigation. Credit reporting of accounts can result in greater financial difficulty for consumers who may rely on good credit. Litigation raises the stakes for consumers by forcing them to hire attorneys, miss time from work, and find that creditors are less likely to be flexible in settlements. This also creates added stress on the court systems, which are already stretched to manage their existing caseload.

We appreciate the opportunity from the Department of Consumer and Worker Protection ('**DCWP**') to share our perspectives.

Our Perspectives:

Verbal Cease and Desists Requests

Section 5-77 of the Rules addresses unconscionable and deceptive trade practices. 5-77(b)(4) sets out provisions relating to a consumer's requests not to be contacted and states that it is unconscionable and deceptive for a debt collector, outside of narrow exceptions, to:

"communicate or attempt to communicate with a consumer with respect to a debt if the consumer has notified the debt collector that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except for any communication which is required by law."

Section 5-77 (b)(4) goes further than the provisions of the *Fair Debt Collection Practices Act*('**FDCPA**') relating to cease-and-desist requests. In particular, unlike 15 USC 1692c(c), under the proposed Rules, such a request need not be in writing.

While it may be the intention of the Rules to extend beyond the protections of the FDCPA, if the Rules are not amended to similarly require such request to be in writing, the provision will lead to poor outcomes for New York City consumers, including consumers being subject to increased litigation and costs.

With the abundance of telemarketing, scam callers and other nuisance calls, it is not uncommon for consumers to make statements like "*stop calling me*", often without having a full appreciation of who is calling them and what the matter relates to. Other times, consumers may make such statements when they are called at an inconvenient time, or without considered thought.

The requirement for a cease-and-desist request to be in writing under the FDCPA ensures that consumers only make such requests in a considered way, and where they understand who is calling them. Alternatively, if verbal requests are permitted, the collector should be permitted to ask reasonable questions to ensure that the consumer understands the nature of the call – i.e. that it is not a telemarketing or spam call, but relates to a legitimate business matter that would likely be of importance to the consumer.

Where a consumer makes a cease-and-desist request to a debt collector, the debt collector is left with two alternatives - either cease all further collections activity, or refer the debt to an attorney for review of the debt for litigation. Unless the debt balance is very small, litigation is typically the option pursued.

The average New York City consumer is unlikely to have a strong (if any) understanding of the New York City Debt Collection Rules. Certainly, the average consumer is unlikely to expect that a single verbal statement will restrict all further contact and will immediately and significantly increase their odds of being subject to litigation.

Not only is 5-77(b)(4) damaging to consumers, but it also puts pressure on the courts, with consumers who would have otherwise resolved their debts in future discussions with their collector, being forced through an early litigation process.

A CRC member who is a large market participant and one of the largest 10 debt buyers operating in the United States, has analyzed its data and determined, having regard to tens of millions of data points, that consumers in states with more restrictive collection laws, such as those proposed in New York City, are subject to litigation on average 30% earlier than consumers in states with less restrictive rules.

We strongly urge you to amend the prohibition of contact at 5-77(b)(4) to insert the language indicated in red.

"communicate or attempt to communicate with a consumer with respect to a debt if the consumer has notified the debt collector clearly and conspicuously that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except for any communication which is required by law. In response to such a request, the debt collector may reasonably confirm with the consumer that the consumer understands the nature of the call and still wishes to have calls cease. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request."

In the alterative, this provision should be removed, given the existing protections relating to cease-and-desist requests under 15 USC 1692c(c) and the separate general provisions relating to harassment or abuse which already exist under the FDCPA at 15 USC 1692d.

Contact During Working Hours

5-77 (6) sets out provisions in relation to contact during the consumer's working hours. In the relevant part, this section provides that debt collectors must not:

"Communicate or attempt to communicate with a consumer at a time the debt collector knows or should know is during the consumer's work hours".

This is not limited to contact made to the workplace, and would apply to any communication or attempted communication during the consumer's working hours, including calls to the consumer's cell number, emails, text messages, and letters.

We are uncertain whether this is a drafting mistake as there does not appear to be any good public policy to support the provision as drafted.

We consider that this provision will significantly damage consumers. This is because it will unduly restrict customer contact, and lead to expedited litigation in significant volumes.

The proposed provision prohibits contact to a New York City consumer, not only at a time the debt collector knows is during the consumer's working hours, but also where the debt collector should know this. It is unclear when it may be judged that a debt collector should have known the consumer's working hours. First, there is the assumption that the collector would know even if the consumer would be working. Absent some direct information received from the consumer by the debt collector, there is simply no way for the collector to have this information. Even if a collector does know that a consumer is working in a particular business or profession, for instance, in an office environment, how would the collector know if the office hours are 9am and 5pm, 8am to 4pm or some other time range? Enacting this provision would likely create a detrimental chilling effect on collectors and this would be harmful to consumers. Debt collectors are likely to implement the rule, if unamended, in a conservative way to ensure compliance, creating the most restrictive contact rules anywhere in the United States.

If 5-77(6) remains unamended, debt collectors operating in New York City are likely to modify their collections strategy to a simpler and less risky 'demand and litigation' model, removing telephone and digital engagement from the collections models altogether. This will detract from the sustainable and flexible collections options debt collectors discuss with consumers by telephone today, and will be a poor outcome for New York City consumers.

Consumers already have protections under the FDCPA and Regulation F in relation to calls at any unusual time or place known or which should be known to be inconvenient to the consumer[1]. Similarly, the FDCPA

[1] See 15 USC 1692c

protects consumers from harassment in the workplace, restricting contact if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication[2].

To avoid detriment to consumers, 5-77(6) must be amended as follows:

Communicate or attempt to communicate with a consumer ~~at a time the debt collector knows or should know is during the consumer's work hours, or~~ by sending an electronic message to an email address or a text message ~~or call~~ to a phone number, that the debt collector knows or should know is provided to the consumer by the consumer's employer. Notwithstanding the foregoing, such communication is permissible where the consumer provided prior ~~written~~ revocable consent to the debt collector to use ~~a direct number~~ such contact details provided by the consumer's employer as ~~the consumer's preferred~~ a method of contact for the debt and the consumer has not otherwise revoked such consent and such communication does not violate any other provision of local, state or federal law.

Amongst the other changes, the "preferred method" concept should be removed. A consumer may provide consent, but may not expressly articulate it as their "preferred method". A debt collector should be able to give effect to the consumer's consent, regardless of whether it is further conditioned as the consumer's "preferred method".

Communication Limits

We recognize that consumers must be free from excessive communication. However, we also note that where collectors are able to communicate with consumers, they are able to work through financial difficulty and mutually agree to sustainable and meaningful repayment arrangements. Where the collector's ability to communicate with a consumer is limited, the reality is that legal action becomes much more likely.

We consider that the position achieved by §5-77(b)(iii)(A) does not achieve an appropriate balance in circumstances where any communication or attempted communication outside of limited exceptions, is limited to 3 times in a 7-day period per consumer.

We note that this is significantly out of step with the rebuttable presumption of compliance under Regulation F, which allows for 7 contact attempts in a 7-day period.

As noted above, based on modelling conducted by a CRC member based on millions of data if contact remains limited as proposed, New York City consumers will be subject to litigation 30% more quickly than consumers in jurisdictions with less restrictive rules.

This is plainly a poor outcome for all parties. Collectors will incur legal costs which consumers will ultimately pay for. More consumers will be subject to litigation with debts recovered through more rigid enforcement actions, such as pay garnishees, and the already overstretched court system, will become more overburdened.

In our first position, we urge the department to align the Rules to the rebuttable presumption limits (7 attempts in 7 days) outlined in Regulation F. In the alternative, we recommend that §5-77(b)(iii)(A) be amended as follows:

(A) Excessive frequency means any communication or attempted communication, except communications or attempted communications set forth in item (E) of this subparagraph, made by the debt collector to a

[2] See 1692c(3).

consumer by any medium of communication, in connection with the collection of debt within a seven-consecutive-calendar-day period, either 1) more than 5 times in total during such period per consumer …

Communication in Connection with Debt Collection – Contact Limits- Multiple Debts

5-77(b)(1)(iii)(B) seeks to address contact limits where a debt collector is attempting to collect on multiple debts from the same consumer on behalf of non-affiliated creditors, under which provision, the frequency shall be calculated separately for each non-affiliated creditor.

This is a helpful provision, designed to address circumstances where debt collection clients require separation of data from that of other clients, or where separate teams service different client accounts. Such data separation requirements can also apply to debt buyers. Accordingly, this provision should be amended to also apply to debt buyers who are collecting debts that were originated by non-affiliated creditors, but are not collecting these debts on their behalf.

We propose that 5-77(b)(1)(iii)(B) is amended as follows, with the change indicated in red:

"Where a debt collector is attempting to collect on multiple debts from the same consumer on behalf, or as an assignee, of non-affiliated creditors, excessive frequency shall be calculated separately for each non-affiliated creditor."

Disputes and Verification Requests

A consumer may dispute a debt orally, in writing, or electronically (if the debt collector uses electronic communications to collect debt) at any time during the period in which the debt collector owns or has the right to collect the debt, where such debt was purchased after October 1, 2025[3]. Where such dispute or verification request is received, a debt collector must provide a written response to the consumer's first dispute or first request for verification within 60 days[4].

Pursuant to 5-77(f)(7)(iii), if a debt collector, other than an original creditor, fails to send the consumer verification of the debt within the required period, it cannot resume collection activity on the debt and must mail a notice of unverified debt to the consumer in accordance with 5-77(f)(8).

In contrast, under 5-77(f)(7)(iv), an original credit who is unable to send the notice within the required period may resume collection activity after it subsequently sends the consumer verification of the debt.

We consider that 5-77(f)(7)(iii) provides a harsh penalty for debt collectors and serves to create a lucrative incentive for consumers to provide "soft disputes" deliberately worded such that they will not be detected as disputes.

The industry already experiences significant litigation baiting from consumers who have been coached by credit repairers, self-styled online "get out of debt free" gurus, and consumer attorneys, to make a "soft dispute" deliberately worded and intonated such that it will not be picked up by the average collector as a dispute, to provide a basis for lawsuits or threats of lawsuits for failure to report disputed debts as disputed under the *Fair Credit Reporting Act*.

Similarly here, if the Rules remain unamended, consumers will have an incentive to game the system. This strategy will deliver windfall gains to those consumers who are brazen enough to adopt them, and to the credit repairers, "get out of debt free" gurus, and attorneys who represent them. The costs of this conduct

[3] Pursuant to 5-77(f)(6)

[4] Meeting the obligations set out in 5-77(f)(7)(v) and (iv) as applicable.

is reflected in lower purchase prices offered to originating creditors, resulting in higher loss rates for originating creditors with the cost ultimately being passed on the consumers in the form of higher costs of credit.

We submit that this incentive must be removed, with the same provisions[5] applying to originating creditors being applied to debt collectors, allowing debt collectors to resume collections after having first provided verification. Corresponding changes would also be required to 5-77(8).

In the alternative, 5-77(f)(6) should be amended to clarify that any dispute or request for verification must be clearly articulated and unambiguous, setting out what information is disputed, the reasons for the dispute, and expressly requesting that the debt collector respond.

Additionally, 5-77(f)(1)(iv) requires a debt collector to provide a statement to a New York City consumer which includes, amongst other things, that "*once you dispute the debt, the collector must stop collection*". This language may be confusing to consumers and should be amended as indicated in red:

"You must get a response to the disputed debt in 60 days. Once you dispute the debt, the collector must stop collection until it has sent verification of the debt."

Notice of Unverified Debt Requirements – Credit Listings

Proposed section 5-77(f)(8)(iv) requires that the notice of unverified debt must, "*if applicable, disclose that the debt collector previously furnished information about the debt to a consumer reporting agency and that it will provide the disputed debt information to such agency to the extent not already provided, and upon request, provide a copy of the Notice of Unverified Debt to such agency*."

To resolve disputes expeditiously, many debt collectors who have furnished information to a credit reporting bureau will seek to delete the listing. Accordingly, we recommend that 5-77(f)(8)(iv) be updated to insert the language indicated in red.

"if applicable, and unless the debt collector has already requested deletion of any credit listing related to the unverified debt, disclose that the debt collector previously furnished information about the debt to a consumer reporting agency and that it will provide the disputed debt information to such agency to the extent not already provided, and upon request, provide a copy of the Notice of Unverified Debt to such agency."

Notice of Unverified Debt Requirements – Language Requirements

5-77(f)(8)(viii) requires that the notice of unverified debt must be delivered by US mail or other delivery service in English and any other language used by the debt collector to communicate with the consumer in accordance with 5-77(f)(3). We do not consider that it is helpful to consumers who have requested to communicate in another language to receive an English version of the translated correspondence. Consumers elect to communicate in a particular language because it is their preference and often, because they are unable to read, write or understand English, or have limited proficiency. Where a non-English speaking consumer who has elected to communicate in a different language receives an English letter accompanying the letter in their choice of language, they are likely to be concerned that the English letter

[5] 5-77(f)(7)(iv)

may contain important information they are unable to understand. This may cause anxiety and inconvenience, as they seek to find a means of translating the English letter. We recommend that 5-77(f)(8)(viii) be amended as indicated in red.

"deliver a timely written Notice of Unverified Debt to the consumer by U.S. mail or other delivery service in English ~~and any other language used by the debt collector to communicate with the consumer in accordance with paragraph (f)(3) of this section.~~ unless the consumer has nominated another language preference which the debt collector is able to accommodate, in which case, the Notice of Unverified Debt must be sent in that language."

Recording of Language Preferences

§2-193(b)(5) states as follows:

A debt collection agency must maintain the following records[…] to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:

(5) a record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

We note that this obligation places a positive duty on the debt collector to make reasonable attempts to obtain awareness of the preferred language, even where the consumer contracted in English, and it is plain from the interaction with the consumer that their proficiency in English is very high.

Requiring such steps is unduly burdensome, likely to inconvenience consumers by extending the time they are required to interact with the debt collector, is likely to confuse consumers as to the intent of the question, and offers little real benefit to the consumer and may induce fear of having to share what they may consider private information. We recommend that the section be amended as follows:

(5) a record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it, or where it is apparent from the interaction with the consumer that they have a high degree of proficiency in English, and the consumer has not indicated otherwise. [emphasis added].

Time-Barred Debt Notification

5-77(i)(5) sets out the proposed obligations relating to time-barred debt notification, and states:

"A debt collector must include substantially the same time-barred debt disclosure as the disclosure contained in paragraph (2) of this subdivision in every permitted communication for each debt that is beyond the applicable statute of limitations in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt."

We note that many debt collectors only have the capacity to send black and white correspondence, or if they have access to color print, the costs of letter production are substantially increased. We consider that prominence can be achieved in ways other than contrasting color and propose the following changes highlighted in red.

"A debt collector must include substantially the same time-barred debt disclosure as the disclosure contained in paragraph (2) of this subdivision in every permitted communication for each debt that is beyond the applicable statute of limitations in a prominent manner in at least 12 point bold type ~~that is set off in a sharply contrasting color from all other types on the communication~~, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt."

Communication in Connection with Debt Collection - Disclosure that the person may revoke consent

5-77(b)(5)(v) requires that a debt collector must include in every electronic communication to the consumer, "*a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communications at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by replying stop*".

We agree with the intent of the provision, but the degree of prescription is problematic and leads to poor consumer outcomes.

Text messages generally support up to 160 characters. The requirement to provide lengthy disclosures effectively prevents SMS messages from being available to New York City consumers who, our experience tells us, would likely prefer and would benefit from such channels of communication. Where local laws and rules provide no, or less, prescription, a simpler statement, such as *"To opt out reply STOP*" can be used. This preserves character count for the content of the message and other required disclosures, allowing SMS to be a viable method of communication.

Member's experience has shown that consumers engage well via text message, particularly when used in conjunction with self-service portals, where the consumer can manage their account at their own convenience and without having to speak to a debt collector. Members report that over the past 12 months, digital engagement with consumers outside of New York City has increased by over 75%. while no material increase has been observed in New York City. This is solely attributed to the prescriptive regime adopted by New York City in relation to consent for electronic communication.

The prescriptive regime around seeking consent from New York City consumers to communicate electronically is out of step with other states, stifles innovation, increases costs for creditors by restricting low cost collection models, and most importantly, is depriving consumers of choice in the way they wish to interact with debt collectors. We recommend that New York City conduct targeted outreach with average consumers to better understand how they wish to communicate with businesses in the modern context, and amend its outdated and prescriptive consent obligations to align with the approach taken in other jurisdictions, and better align with consumers' preferences.

Itemization Dates.

The definition of "Itemization reference date" has been improved to account for accounts where no charge-off date is available, through the addition of point 3. While the addition is helpful, we consider that the definition is still problematic and should be further improved.

The definition currently proposed is as follows:

Itemization reference date. *The term "itemization reference date" means any one of the following dates: (1) on revolving or open-end credit accounts, the charge-off date of the debt, or (2) on [closed-end] accounts other than revolving or open-end credit accounts, either the date of the last payment if such date is* *available, or the charge-off date of the debt, or (3) on accounts that lack a charge-off date, the date of the most recent transaction that gave rise to the debt.*

Point 2 requires the collector to use the date of last payment if it is available. The "if" condition requires complex conditional logic, with different values and wording presented, depending on the availability or not of certain pieces of information.

Upon implementing controls for compliance with Regulation F, debt collectors almost universally used the charge off date as the itemization date in its validation notices. Debt buyers operating in multiple states will need separate logic to produce notices in New York City, from notices used elsewhere.

There do not appear to be any strong policy objectives that would support the need for debt buyers to defer to the last payment date, rather than the charge off date, when it is available. It does not appear to serve any benefit to consumers.

We consider that a consumer would be able to recognize the obligation from a validation notice as easily, regardless of which of these itemization values is used.

We submit that the definition of Itemization reference date be amended are indicated below in red. We consider this appropriate as it will simplify compliance while presenting no corresponding detriment to consumers.

***Itemization reference date**. The term "itemization reference date" means any one of the following dates: (1) on revolving or open-end credit accounts, the charge-off date of the debt, or (2) on [closed-end] accounts other than revolving or open-end credit accounts, either the date of the last payment, ~~if such date is available,~~ or the charge-off date of the debt, or (3) on accounts that lack a charge-off date or where such date is not reasonably available, the date of the most recent transaction that gave rise to the debt.*

Records to be Maintained by Debt Collection Agency – Call Duration

2-193 (a)(6)(i) requires that a Debt Collection Agency maintain for each communication and attempted communication with the consumer, certain information in a manner that is searchable and easily identifiable, the date, and the time <u>and duration</u> of the communication or attempted communication.

While most debt collection software records the date and time of communication, most do not retain searchable records in relation to duration. A manual requirement for staff to record such information would be difficult to operationalize and would be subject to error and inconsistent logging.

Debt collectors would need to invest significant resources to uplift computer systems to record call duration in a searchable and easily identifiable form.

Noting the obligations to retain call recordings, which could be consulted in the event a complaint was made in relation to a call of unreasonable duration, we submit that this section ought to be amended as indicated in red.

"the date, and the time ~~and duration (if applicable)~~ of the communication or attempted communication"

<u>Recording Retention Period</u>

§2-193(d)(2) requires the collector to retain recordings of oral communications with consumers, until three years after the date of the latest oral communication.

Such an obligation would be difficult to operationalize. Consider, by way of example, a collector who had not had an oral communication with a consumer for 4 years, and elected to destroy the recordings of earlier oral communication. Were a consumer to contact the debt collector and engage in further discussion, the debt collector would, thereafter, not be in compliance with §2-193(d)(2).

As a result, collectors will set their compliance policies conservatively to retain call recordings indefinitely. This will increase the risk to consumers in the event of a data breach.

We respectfully submit that the benefit of retention beyond 3 years does not outweigh the risks of retention. Accordingly, we recommend that §2-193(d)(2) be amended as follows:

(2) for recordings of oral communications with consumers, until three years after the date of the ~~latest~~ oral communication.

Limited Content Message Definition

While the definition of "limited-content message" appearing on page 9 appears to be reasonable, the wording differs from the definition settled in Regulation F. Since there does not appear to be a practical distinction, we encourage the Department to align the definition to accord the definition set out Regulation F. This will simplify compliance for debt collectors, with no corresponding detriment to consumers.

Unconscionable and Deceptive Trade Practices.

Section 5-77 of the rules addresses third party contact, and states that any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt must:

(1) *Identify themselves, state that they are confirming or correcting location information about the consumer and identify the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested.*

This rule is redundant due to the broader provisions of the FDCPA. Pursuant to 15 USC 1692b(1), a debt collector may only identify his employer if expressly requested, regardless of whether the identification connotes debt collection or not.

To simplify the Rules and reduce regulatory burden, *5-77(1) should be removed*, meaning that collectors only need to have regard to the stricter provisions of the FDCPA.

Previous Comments

On November 29, 2023, the CRC provided comments to an earlier version of proposed changes to the Rules. The CRC's previous comments are attached and incorporated herein. Our previous thoughts and comments regarding the proposed amendments and their negative effect on consumers remain unchanged.

Commencement Date

Finally, the commencement date of October 1, 2025 should be amended. Most debt collectors have taken no steps to adjust their compliance systems due to the regulatory uncertainty and prospect of further changes. We recommend that the date for compliance be no sooner than 12 months after the date the final rules are made public.

We thank you for your attention to our submission. We would be happy to make ourselves available to discuss our submission further with DCWP, should this be of benefit to the rulemaking process.

consumer relations consortium
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November 29, 2023
Re: DCWP Proposed Amendments to Rules Relating to Debt Collectors

To: Department of Consumer and Worker Protection
Submitted via email: rulecomments@dcwp.nyc.gov

Comment to Proposed Amendment of Rules Relating to Debt Collectors

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing creditors, data and technology providers, and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors, and debt collectors—and challenges them to move beyond talking points. The CRC focuses on fashioning real-world solutions that seek to improve the consumer's experience during debt collection. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities, and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

"Consumer protection and debt collection are not mutually exclusive ideas; they can, *and should,* co-exist."

We appreciate the opportunity to respond to the Notice of Public Hearing and Opportunity to Comment on the Amendment of Rules Related to Debt Collectors, dated September 30, 2023. As explained in the enclosed comment, the CRC is concerned that the DCWP's proposed rule will (a) create unnecessary consumer confusion, (b) unreasonably burden debt collectors with little to no countervailing benefit to consumers, and (c) create other negative unintended consequences. The CRC believes the Proposed Amendment must be significantly updated to avoid these consequences.

Sincerely,

Missy Meggison

Missy Meggison
Co-Executive Director, Consumer Relations Consortium

CONSUMER RELATIONS CONSORTIUM COMMENT RE: PROPOSED AMENDMENT OF RULES RELATED TO DEBT COLLECTORS

The Consumer Relations Consortium is submitting its comments, feedback, and suggestions in response to the New York City Department of Consumer and Worker Protection's Proposed Amendment of Rules Related to Debt Collectors, dated September 30, 2023.

As explained in further detail below, the CRC's position is that, the proposed amendment will (a) create unnecessary consumer confusion, (b) unreasonably burden debt collectors with little to no benefit to consumers, and (c) create other negative unintended consequences for the following reasons:

1. The proposed validation notice requirements are inconsistent with federal disclosure requirements and will Create Consumer Confusion.

2. The new validation period calculation will create consumer confusion because it does not align with Regulation F. (Page 6)

3. Verification requirements under the proposed rule cannot be reconciled with regulation F and will confuse consumers. (Page 7)

4. The contact frequency rules are unclear and should be clarified to apply "per person, per account" to avoid inconsistency with federal law. (Page 8)

5. The proposed rule harms consumers by eliminating their ability to choose a communication preference. (Page 10)

6. The proposed rules regarding medical debt are unnecessarily onerous, overbroad, and place unreasonable burdens on debt collectors. (Page 13)

7. The proposed credit reporting notice imposes tremendous costs on the debt collection industry with little countervailing benefit to consumers. (Page 16)

8. The proposal's use of clarifying language creates unintended negative consequences. (Page 22)

Within this comment, the CRC has included suggestions for the DWCP to achieve its goals without creating additional confusion, hardships, and other negative consequences.

1. The New Validation Notice Requirements Are Inconsistent with Federal Disclosure Requirements and Will Create Consumer Confusion

The proposed update to § 5-77(f)(2) contemplates a significant overhaul of the information required to be included in the validation notice in a way that interferes and potentially contradicts

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federal law and will likely cause consumer confusion. The proposed rule should be amended to reconcile the City requirements with federal law and to eliminate potential consumer misunderstanding. This can be accomplished in at least the following ways:

a. Allow the validation notice to be sent electronically.

The proposed rule currently states that the notice must be "written" and "sent by U.S. mail or delivery service." *See § 5-77(f)(2).* For the reasons discussed in greater detail in Sections 4 and 5 below, the proposed rule should be amended to relax the rules for communicating electronically to provide consumers with better control over selecting the mode of communication.

b. Remove the "natural person for the consumer to contact" requirement.

Section 5-77(f)(2)(iii) and (iv) require the validation notice to include "the name of a natural person for the consumer to contact" and a "telephone number that is answered by such natural person" This requirement is unclear. For example, is providing the name of the individual who works regular hours sufficient, even when that person may not be working at the time of a consumer's call? If the person is not available – not working that day, no longer employed, or occupied on another call, is it acceptable for the call to be answered by a different person, or is a voicemail box required for that specific individual? Does the telephone number need to be a direct line, as most frontline agents do not have specific direct lines? Can the disclosure also include alternative contact information, like either a specific individual or company email address?

In addition to the challenges such a requirement creates, this disclosure is also unnecessary, as it presupposes that there is a specific individual responsible for collecting a specific account. Collection agencies are not generally built that way however, accounts are worked by teams and any agent on that team answering a call would be equally available and knowledgeable to discuss an account with the consumer. Of Course, consumers can elect to ask for a specific agent to whom they have established a relationship, but including a specific name for a specific account at the outset does not benefit consumers and actually makes it less likely a consumer will be able to communicate with a natural person when calling the debt collector because it contemplates only one person being available, when that person may not be available when the consumer calls. This requirement should be removed from the proposed rule.

c. Remove Dispute disclosure requirements or conform them to the FDCPA

The disclosure in § 5-77(f)(2)(v) creates irreconcilable conflict with the Fair Debt Collection Practices Act (FDCPA). For example, the disclosure requires the debt collector to tell the consumer "**There is no time limit to dispute the debt in collection.**" (emphasis in original). This disclosure directly contradicts the FDCPA, which requires the debt collector to provide a specific date by which the validation period will end. *12 C.F.R. § 1006.34(c)(3)(i)-(iii)*. Simultaneously telling a consumer that a request for validation is required by a date certain while notifying the consumer that there "is no time limit to dispute the debt" provides a consumer with two different and contradictory pieces of information, creating a high likelihood of consumer confusion on the timing and manner in which they may dispute their debt.

Further, the disclosure in § 5-77(f)(2)(v) requires that consumers be told that the dispute can be done in "any of the ways they contact you, including by phone." This language contradicts the FDCPA, which requires the verification request to be done in writing to trigger validation rights. *Se 15 U.S.C. 1692g(a)(4)*. Again, consumers are told conflicting information under the proposed rule, which is likely to cause consumers to unknowingly forgo their federal dispute rights by disputing their debts in ways that do not trigger federal verification obligations.

d. Remove subjective and vague itemization language requirements.

The itemization proposal in § 5-77(f)(2)(viii) also creates potential confusion and misunderstanding. The proposed rule says the itemization is to be done in a way that "allows the consumer to recognize the total amount of the outstanding debt as of the itemization reference date." Establishing a standard on what will "allow" a consumer to recognize the amount of the debt is too subjective and uncertain. This language should be removed.

e. Allow itemization from any of the Regulation F itemization dates.

The specific itemization breakdown contemplated by the proposed rule is confusing and unnecessary as a detailed itemization is already required by federal law. The proposed rule says the itemization needs to be tied to the "itemization reference date", a term specifically defined in § 5-76(3) to be only "the date of the last written notification sent to the consumer "on an open-ended credit account, or "the date of last payment…or the date of the last written notification sent to the consumer" for a closed-end account." This itemization period is artificially limited and contradicts with Regulation F, which allows for 1 of 5 different itemization dates.

The specific dates required by the proposed rule are not always available to debt collectors, making the proposed itemization impossible and requiring greater flexibility on available itemization dates. Moreover, the proposed rule creates a possible scenario when the itemization for Regulation F will be different than the itemization done for New York City. This will likely cause additional consumer confusion when consumers receive different itemization tables. The proposed rule should be modified to allow the itemization from any of the Regulation F itemization dates.

f. Modify itemization requirements to avoid consumer confusion and the unintended consequence of requiring debt collectors to provide legal advice.

The itemization contained within § 5-77(f)(2)(v)(B) includes the "date, amount, and description of each fee, payment, credit, or interest applied to the debt since the itemization reference date" This is an unworkable level of detail for an initial notice and outside the knowledge or obtainable by debt collectors. For example, how is a debt collector reasonably expected to know the date of each interest charge since the itemization reference date? To what level of specificity is the "description" of each charge required? Is each payment required to be individually stated and include the manner of the payment for example? Rather than burying the consumer in excessive detail at the outset, the proposed rule should be modified to simply require the amounts of each fee, payment, credit and interest charge.

Similarly, including the "basis of the consumer's obligation to pay each separate charge, interest, or fee, including if allow by contract or by law" is burdensome. The proposed rule is not limited in time or scope, and suggests a legal determination is to be performed by the debt collector on what the creditor is charging a consumer. A debt collector should not be required to exercise legal judgment in sending the validation notice to each consumer. At a minimum, the proposed rule should be modified to allow that, if accurate, stating that each charge is allowed by the consumer's agreement with the creditor or the law satisfies this obligation. Otherwise, debt collectors are required to articulate the basis for a charge applied by the creditor by expressing a legal conclusion.

2. **The New Validation Period Calculation Will Create Consumer Confusion Because it does not align with Regulation F**

Section § 5-77(f)(4) of the proposed rule defines the validation period as extending "for 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice." Though the proposal seems to track the Regulation F validation period calculation methodology, the proposed rule should be clarified that a debt collector satisfies the obligation of providing a validation period by giving the consumer a specific end date that is at least 5 days after sending of the validation notice plus 30 consecutive business days consistent with Regulation F. In other words, the debt collector can provide the consumer a date certain when the validation period will end, provided that date meets the 5 delivery day plus 30 day requirement.

The proposed rule should clarify that debt collectors can allow for a validation period beyond this time as well. Otherwise, the proposed rule potentially creates two different validation periods under federal and New York City law. As a result, the proposed rule should allow the debt collector to calculate and provide a specific validation period of 5 days for delivery plus <u>at least 30 days</u> like Regulation F so as not to have 2 different validation periods. Such a revision of the proposed rule will only increase consumer benefits with more time while removing potential confusion.

3. <u>Verification Requirements Under the Proposed Rule Cannot be Reconciled with Regulation F and will Confuse Consumers</u>

Section 5-77(f)(6) of the proposed rule allows a consumer to dispute the debt or make a request for verification "orally or in writing, or electronically if the debt collector uses electronic communication to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt."

This proposal requires amendment, as it directly contradicts the FDCPA. Regulation F requires the debt collector to specifically tell the consumer that a request for verification must be made within a specific time period and in writing. The proposed rule undermines this specific disclosure and will lead to consumer confusion as it is not possible to reconcile federal disclosures with the proposed rule in a non-misleading way. The proposed rule should be modified to require that a request for verification cannot be effectively made verbally (though most debt collectors will honor a verbal request) and that the request must be made within the validation period so as to remove any contradiction with the FDCPA disclosure.

The requirement that the debt collector "must treat a first dispute by the consumer as a request for verification of the debt" should be removed. This proposal conflates a dispute with a request for verification, and requiring the debt collector to respond to a dispute, standing alone, with verification is unnecessary. If a consumer simply disputes the debt, but does not ask for, or even rejects a request by the debt collector to send validation, the debt collector should not be compelled to respond to that dispute with a non-responsive, non-requested, and potentially unwanted verification.

Similarly, the enhanced verification requirements in § 5-77(f)(6)(i)(A) – (C) should be revised. Rather than requiring items like the underlying contract, evidence that an "account was active", prior settlement agreements, and a final account statement, these items should be identified as suggested documents, not required. In other words, the proposed rule should be revised to say that "Verification of the debt means providing information reasonably necessary to demonstrate that the consumer's obligation to the creditor of the amount claimed due. This demonstration can be made by, among other documentation…." followed by § (A) - § (C). This revision will equitably balance the challenges debt collectors may face in timely obtaining and providing the required documentation to the consumer while providing the consumer sufficient detail to substantiate the debt.

4. **The Contact Frequency Rules are Unclear and Should be Clarified to Apply "Per Person, Per Account" to Avoid Inconsistency with Federal Law**

Section 5-77(b)(1)(iv) of the proposed rule prohibits a debt collector from communicating with a consumer with "excessive frequency[.]" The rule describes "excessive frequency" as any communication (by any means) that is more than three times in a seven-day period or after having already interacted with the consumer within the seven-day period. The language of the proposed rule, however, is ambiguous.

First, it is unclear whether the proposed 3-in-7 rule applies on a "per consumer" or "per account" basis, or both. On the one hand, the preamble of the provision characterizes the prohibited conduct on a per-account basis ("A debt collector, in connection with the collection of **a debt**, must not . . ."). On the other hand, the provision defining the frequency limitation characterizes the prohibited conduct as more than three communications "with **a consumer**" in a seven-day period or after already having had an interaction "with **the consumer**." In its current form, the rule is confusing and makes compliance difficult.

Due to this ambiguity, the rule should be clarified to expressly address whether the proposed 3-in-7 rule should be applied on a per account or per consumer basis or both. The CRC recommends that the 3-in-7 rule should be applied on a per account, per person basis, which is consistent with the application of the 7-in-7 rule under Regulation F. The 3-in-7 rule already significantly limits reasonable communications with consumers beyond what is defined under Regulation F as it includes all methods of communication (including electronic communications) and decreases the overall number of contact attempts by more than 50% of what is allowed by federal law. If it were to be construed as applying on a "per consumer" basis, it would unnecessarily limit communication attempts even further and unduly constrain agencies from making reasonable attempts to collect on unpaid accounts. Providing for collections on a per-account basis acknowledges the reality that consumers often have more than one unpaid account owed at any given time and recognizes that the definition of consumer (including parents of a minor, guardians, executors, and spouses) makes it difficult to determine contacts by "consumer."

Second, the proposed rule prohibits communications after a collector has already "interacted" with a consumer but fails to define what constitutes an "interaction." An "interaction" should be defined to avoid confusion. Specifically, the proposed rule should define an "interaction" as a conversation with the consumer regarding the debt and expressly exclude passive interactions such as "opened" or "viewed" electronic communications, Limited Content Messages, and/or disconnected calls to be consistent with Regulation F.

The contact frequency restrictions in the proposed rules severely restrict a debt collector's ability to communicate with consumers. The Department should consider the potential negative impact on consumers resulting from a debt collector's inability to communicate with consumers. Absent a detailed empirical study on the impact to consumers on a debt collector's ability to communicate with consumers, the Department risks imposing severe burdens on consumers as the result of a debt collector's inability to communicate with them. The longer it takes for a debt collector to reach a consumer, the longer a legitimate debt remains outstanding, remains on a consumer's credit report, remains unresolved, and inhibits the consumer's ability to secure future credit.

5. <u>The Proposed Rule Harms Consumers by Eliminating Their Ability to Choose a Communication Preference</u>

Section 5-77(b)(i)(5) of the proposed rule states that a debt collector may communicate with a consumer by

> ". . .email address, text message number, social media account, or specific electronic medium of communication if:
>
> ***
>
> (B) the debt collector obtains revocable consent from the consumer in writing, given directly to the debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the debt, and the consumer has not since revoked the consent;"

This proposal contravenes consumer preference, imposes an undue and unreasonable burden on collection agencies, and effectively eliminates the ability to communicate with consumers in a way preferred by many consumers. The proposed rule should be modified for at least 3 reasons:

First, eliminating the concept of a "pass-through" consent for email interferes with the relationship between the consumer and the creditor. Federal law gives a debt collector "safe harbor" when a creditor passes an email address for a consumer to a debt collector. *See 12 C.F.R.*

1006.64(d)(4). A debt collector communicating with a consumer on behalf of a creditor should be permitted to communicate with that same consumer in the manner that the consumer elected, including email address supplied to the creditor. In fact, a consumer's expectations would be that the agency would honor the same preferred communication channel. Prohibiting a debt collector from communicating with a consumer at an email address that is supplied by a creditor starts the collection process off in an adversarial manner, as consumers are likely to be frustrated by the inability to communicate in their preferred manner, such as an email voluntarily provided to the creditor, and removes some consumer choice on how and when to engage with the debt collector.

Second, imposing an "in writing" obligation for obtaining direct consent is unnecessarily onerous – to consumers. Though the proposed rule contemplated obtaining an "electronic signature" (*see* § 5-77(b)(ii)), that electronic "written consent" requires first satisfying "all relevant state and federal laws and rules, including article three of the New York Technology Law…and Electronic Signatures in Global National Commerce Act" (E-SIGN Act). This proposed solution is too limited though, as often, consumers will request that debt collectors "send me an email" during a telephone call. Complying with state law and the E-SIGN Act, including providing required disclosures and system verification to satisfy the E-SIGN Act, cannot reasonably be done during the course of a telephone call. Further such a process is anachronistic as consumers expect to immediately receive responsive mail when requested and not need to go through an E-SIGN Act verification process to simply get details about their debt. The rule unnecessarily burdens consumers' ability to choose email as their preferred method of communication.

Third, consumers want to communicate in modern forms, like e-mail and text messages. In the Consumer Financial Protection Bureau's 2023 Consumer Credit Card Market Report, for example, the CFPB found, regarding email communications, that:

- creditors reported that consumers provided a valid email address and agreed to be contacted at that email address in 76 to 97 percent of cases; and
- the number of email eligible accounts rose from 68.3% in 2018 to 87.6% in 2022.

As it relates to text messages, the report noted that:

- text messaging as a "collection strategy has continued to increase since the CFPB began tracking this figure in 2017";
- "text engagement rates "showed a significant increase, with the engagement rate rising from 36.6 percent in 2020 to 57.7 percent in 2022";
- "the text opt-out rate is notably low, at 1.3%";
- There has been a shift in consumer behavior in the past few years, with more consumers engaging in collection communications via text."

Overall, the CFPB's report from this year shows that consumers prefer electronic communications and barriers to text and email communications should be removed, not added.

A consumer who agreed to be contacted by a creditor, and potentially a debt collector, is not without recourse. Federal law, like the proposed rule, gives consumers ultimate control over how debt collectors can communicate, requiring clear and conspicuous disclosure of a simple opt out process. *12 C.F.R. 1006.6(e).* Because of this, allowing consent to communicate by email to flow from creditor to debt collector maximizes consumer preferences. Additionally, other parts of the proposed rule, including contact frequency limits and opt-out rights, place sufficient guardrails that consumer preferences continue to be honored.

Based on this, the proposed rule should be amended to remove an obligation to obtain any type of consent from the consumer prior to communicating electronically. Alternatively, the proposed rule should be revised to harmonize the New York City rules with the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act in the following ways:

i. Allow a debt collector to obtain consent to communicate with a consumer in their preferred channel by stating in (B) that "the debt collector obtains revocable consent from the consumer when an email address, text message number, social media account, or other electronic medium of communication to communicate about the debt is passed to the debt collector by the creditor;"

ii. Allow a debt collector to obtain consent from a consumer either in writing, electronically or verbally.

6. **The Proposed Rules Regarding Medical Debt are Unnecessarily Onerous, Overbroad, and Place Unreasonable Burdens on Debt Collectors.**

There are several added requirements pertaining to medical debt collection efforts. In general, the proposed rule contains requirements that are onerous, overly broad, and improperly places unreasonable burdens on third-party collectors.

First, the proposed rule broadly defines "medical debts" as any "health care services or medical products or devices." As drafted, the rule applies to all medical debts - whether medically necessary or elective. The disclosure and verification requirements are onerous and appear to be focused on providing consumers with information regarding financial aid. Purely elective procedures, products, and services should not be encompassed in the proposed rule. The CRC recommends revising the definition of "medical debts" under § 5-77(f)(10) and § 5-77(j)(1) to limit application to "**medically necessary** health care services, or medical products or devices."

Second, the proposed rule should provide a proscribed time limit for the verification period under § 5-77(f)(10)(i). (See comments regarding verification above, Section 3.)

Third, § 5-77(f)(10)(iii)(A) of the proposed rule requires "all unverified accounts related to a discrete hospitalization or treatment" within a 6-month period to be treated as disputed (whether or not the account was ever actually disputed). The language is vague and unclear

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regarding what constitutes a "discrete" or "related" treatment. A patient's medical care from a given provider is generally continuous, and treatments are often related. It is unclear what it means here to be "related." Do physical therapy appointments relate to the underlying surgery? Is a prescription for a pain medication related to the surgery? Is a flu shot related to later treatment for a sore throat? The current definition leaves these questions unanswered. CRC recommends striking this provision to require consideration of the application of an "unverified" dispute on a per account basis.

Fourth, the proposed rule places an unreasonable and undue burden on the collection agency to determine and assess the legal obligations of a provider and the financial aid status of a consumer. § 5-77(f)(10)(ii) requires the collection agency to verify any consumer dispute regarding a medical debt "by responding to the specific issue disputed by the consumer" including any information "available to the debt collector required to be disclosed by federal, state, or local law, including the relevant financial assistance policy" (§ 5-77(f)(6)(i)). The language is ambiguous and lacks clarity as to what would be adequate to address the "specific" issue and what might be required under applicable law. Typically, medical debts are verified by providing a comprehensive "Explanation of Benefits" and, if applicable, directing the consumer to the creditor to apply for financial assistance. Accordingly, the language should be modified to state that collector may verify the dispute by providing an explanation of benefits addressing the disputed account and providing information to the consumer regarding how to contact the creditor to apply for financial assistance.

Likewise, the rule places an undue burden on the collector to verify information uniquely within the provider's possession. § 5-77(f)(10)(iv) and § 5-77(j) prohibit a debt collector from attempting to collect a medical debt if the collectors "knows or **should** know" that the medical provider failed to provide certain financial assistance information or rights to the consumer, violated the law, made a misrepresentation to the consumer regarding financial assistance, or that a financial assistance application is pending. If the collector "obtains information" regarding any of the above failures, it must complete various "corrective measures" including notifying the provider within **<u>one day</u>**[1]; documenting all account notes; mailing the consumer a written notice; and providing information to any transferring entity. The collector is also prohibited from resuming collection efforts until it has "verified" that the provider has "met its obligations" under all applicable law and its financial assistance policy.

The above requirements improperly place the legal obligations of the provider to comply with applicable law and its own financial aid policy onto the debt collector. Even more troubling, the obligations placed on the debt collector are based on vague descriptions such as what the collector "should know," what "information was obtained" from the consumer, and "verifying" that the provider "met all appliable legal obligations." These expectations are vague, ambiguous, and logically unrealistic and suggest that a collection agency make legal determinations on the compliance efforts of its client. The information needed to assess a provider's compliance with applicable law and a consumer's financial status uniquely rests with the providers – not the collectors, which generally do not even have legal departments. As such, CRC recommends the following:

- § 5-77(f)(10)(iv) should be stricken. It is improper to place the provider's legal obligations on the collector. A collector should not be required to make a legal determination regarding whether a provider has complied with **<u>all</u>** applicable law or the provider's **<u>own</u>** financial aid policy – that is the provider's (and its counsel's) responsibility.

[1] Even if the other CRC recommendations are not incorporated into the final rule, the CRC requests that the time period for notifying the provider be extended to 10 business days. Only providing a single day for the debt collector to assess the information obtained, make a determination, and notify the provider is unrealistic and unduly burdensome.

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- § 5-77(j)(1) should be revised to omit the words "should know" and read as follows: "if the debt collector has **actual knowledge** that:". This limits the onerous requirements under the "corrective measures" subdivision (j)(2) to the debt collector's actual knowledge of the provider's unlawful conduct under (j)(1).
- The "corrective measures" detailed under § 5-77(j)(2) should be revised to limit the collector's obligations. Specifically, the language should be limited to provide that if the consumer raises concerns regarding financial assistance, the collector will provide the consumer with contact information for the provider to inquire about financial assistance offerings. To place any additional burdens on the collector is misplaced and unrealistic. The information described is uniquely in the provider's possession – not the collector's and a consumer will likely be more comfortable providing such information to the provider – not the collector.

7. <u>The Proposed Credit Reporting Notice Imposes Tremendous Cost on the Debt Collection Industry with Little Countervailing Benefit to Consumers.</u>

The Department proposes to amend Title 6 of the Rules of the City of New York §5-77(e) to make unlawful the reporting of a consumer debt to a consumer reporting agency by a debt collector without first providing consumers notice that the debt will be reported to a consumer reporting agency. The relevant portion of the proposed rule states:

> **"§5-77. Unconscionable and Deceptive Trade Practices**
> It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:
> ***
> (10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states,

> in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer."

a. Consumers Benefit from Being Made Aware of Their Unpaid Debts

Lawmakers and regulators have recognized the benefits associated with notifying consumers of the existence of their debts prior to those debts being reported to a consumer reporting agency. *See, Cal. Civ. Code § 1785.26, Utah Code Ann. § 70C-7-107(2),* 15 U.S.C.S. § 1681s-2(a)(7), 12 CFR PART 1022 APPENDIX B. Recently, the Consumer Financial Protection Bureau promulgated Regulation F to implement the Fair Debt Collection Practices Act and addressed the need for consumers to be aware of their debts prior to a debt collector's reporting of that debt to a consumer reporting agency. *12 CFR 1006.30(a)(1)*. Since November 30, 2021, all debt collectors have been required to communicate with consumers about their debt(s) *prior* to furnishing information about that debt to a consumer reporting agency. *Id.*

The proposed rule is not inconsistent with similar laws and regulations throughout the country which require debt collectors to make consumers aware of their debts prior to credit reporting. Notifying consumers about their unpaid debts helps consumers make informed decisions about how best to address their financial obligations.

b. A 14 Day Waiting Period Is Consistent with Federal Law

The proposed rule imposes a 14-day waiting period following a debt collector's notice to a consumer before the collector may report the debt to a consumer reporting agency. This requirement is consistent with federal law wherein Regulation F requires a debt collector to wait a "reasonable period of time" after providing notice to a consumer of the existence of their debt before a debt collector may communicate with a consumer reporting agency about the debt. *12 C.F.R. 1006.30(a)(1)*. The Consumer Financial Protection Bureau has provided official commentary on the meaning of "reasonable period" to mean 14 days or more. *12 CFR Part 1006 Supplement I, Section 1006.30 Note 2. ("A period of 14 consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time.")* The proposed rule also obligates collectors to permit receipt of and monitor for notifications of undeliverability of their communications to consumers about their debts. Regulation F contains a similar requirement. 12 C.F.R. 1006.30(a)(1)(ii). The purpose of the waiting period and the post-notice undeliverability monitoring is to give assurance to a debt collector that the consumer received the collector's notification about the debt. These assurances have been in place, by rule, since November 30, 2021.

c. The Proposed Rule Imposes Costly Redisclosure Requirements on Debt Collectors

Without considering the disclosures already provided to consumers pursuant to Regulation F, the proposed rule would require debt collectors to unconditionally re-disclose to consumers certain information about the debt and provide *new* disclosures to consumers not previously required. Specifically, the proposed rule imposes an absolute prohibition on reporting any information to a consumer reporting agency unless:

> ". . .the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days."

The validation notice requirements in proposed section 5-77(f) contain all of the same requirements imposed on debt collectors under Regulation F, 12 C.F.R. 1006.34(c), plus new disclosures. As proposed, the rule would require debt collectors to unnecessarily duplicate the Regulation F Validation Information previously sent to consumers. Importantly, the information contained in the duplicate disclosure will not be identical to the information contained in the consumer's original validation notice. Among other information, dispute deadlines will be different and the itemization table will be different (to reflect payments and credits since the previous correspondence). This duplicate – but substantively different – validation notice will lead to consumer confusion because the two validation notices received by the consumer will not contain identical information.

Proposed Section 5-77(f) also contains *additional* disclosure requirements not previously required. This means no debt collector will have satisfied the requirement to have provided notice pursuant to 5-77(f) prior to any future credit reporting. The impact of this proposal is to require all debt collectors to resend *duplicate* Regulation F disclosures to all consumers via a new validation notice along with the new disclosures required by proposed 5-77(f). Such a notice would restart the dispute period, rejuvenate dispute and verification rights, and effectively re-start the entire collection process - much to the confusion and detriment of consumers.

The cost associated with requiring all debt collectors to send a new written notice to all consumers far outweighs the benefit of providing duplicate (and inconsistent) disclosures to consumers. Today, it costs more than $0.60 (postage plus paper) to send a single piece of 1 oz correspondence through the U.S. Postal Service system. Debt collectors who are reporting tens (or hundreds) of thousands of debts to the consumer reporting agencies would be required by this proposed rule to spend hundreds of thousands (potentially *millions*) of dollars to re-send the written disclosures required by this proposal. For the reasons explained below, the rule does not allow debt collectors to satisfy these requirements electronically.

d. The Marginal Benefit of A New Validation Notice is Small Considering Its Similarity to the Validation Information Required by Regulation F.

The differences between the new validation notice required by proposed 5-77(f) and the Validation Information required by 12 C.F.R. 1006.34(c) are small. As proposed, the new validation notice required by 5-77(f) would contain all information required by Regulation F. *See, proposed 5-77(f)(1)(i).* In addition to the Validation Information required by Regulation F, the proposal would require debt collectors to provide consumers new disclosures of the following information:

- a license number, if applicable (proposed 5-77(f)(1)(ii))
- the name and telephone number of a natural person (proposed 5-77(f)(1)(iii) and (iv))
- a consumer disclosure (which is confusingly inconsistent with 12 C.F.R. 1006.34(c)(3)(i)) (proposed 5-77(f)(1)(v))
- a new itemization table (which is again confusingly inconsistent with 12 C.F.R 1006.34(c)(ii)(viii) (proposed 5-77(f)(viii))

The marginal benefit to consumers would merely be the difference between the disclosures they already received from a debt collector pursuant to Regulation F and the new disclosures required by the proposal. Based on the new content required by the proposal, consumers would benefit very little from this additional information on accounts for which they have already received the Validation Information under Regulation F. Relative to the tremendous cost of re-sending a new validation notice to consumers, the benefit to consumers remains small.

Before imposing the tremendous cost of re-disclosure on debt collectors, the Department should conduct a consumer focus group study to measure the impact of these additional disclosures on consumers. The combination of Regulation F disclosures, existing New York City disclosures, and now the additional disclosures required by this proposal may very well have the opposite impact on consumers – that they do not read any of them at all, or worse, that they read them but end up confused because of the inconsistent information contained the original and subsequent validation notices.

e. The January 1, 2021 Condition in The Proposal Does Not Eliminate the Requirement to Duplicate the Validation Notice but Instead, Compounds the Burden

No debt collector will have satisfied the requirements of the first sentence of proposed 5-77(e)(10) upon the effective date of the rule because it requires debt collectors to provide new disclosures not previously required. For all debt collectors reporting to a consumer reporting agency after January 1, 2021, they too will be required to provide a new validation notice to consumers because no New York City rule previously required a debt collector to include in its validation notice a statement that "the debt was furnished to a consumer reporting agency." Thus, validation notices before and after January 2, 2021, did not contain such disclosure, and the proposal would impose this requirement. Instead of reducing the burden on debt collectors who reported after January 1, 2021 (all of which were required effective November 30, 2021 to provide all consumers with federally defined Validation Information), the proposal multiplies the burden by requiring the new disclosure to be provided to the consumer within 5 days of the effective date of the rule.

In addition to the tremendous cost associated with sending another piece of mail correspondence to consumers, the 5 day rule is not workable for debt collectors who may not have accurate contact information for consumers and whose credit reporting cycle falls within the 5 day period. The proposal also fails to acknowledge that some consumers may be represented by counsel and others may already be involved in civil litigation, yet the proposal compels direct communication with the consumer by a debt collector. This obligation conflicts with the federal law prohibition on communicating with a consumer known to be represented by counsel.

f. CRC Proposes Alternative Language Which Achieves the Department's Goal Without Imposing Tremendous Burden on Debt Collectors

It is possible to achieve the Department's goal of protecting consumers while at the same time avoiding unnecessary cost on debt collectors. The CRC proposes the following alternative language to proposed section 5-77(e)(10):

"§5-77. Unconscionable and Deceptive Trade Practices

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:
***

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt <u>not previously furnished by the debt collector</u> unless the debt collector has sent the consumer a validation notice pursuant to section 5-77(f) that states, in a clear and conspicuous manner, that the debt will be reported to a consumer reporting agency and waited 14 consecutive days. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this subdivision. ~~If the debt collector previously furnished information to a consumer reporting agency, between January 1, 2021 and the effective date of the rule, and if the debt collector still has a right to collect on such debt, they must disclose in a validation notice to the consumer, by mail or delivery service within 5 days of the effective date of this rule, that the debt was furnished to a consumer reporting agency, unless such information was already disclosed, clearly and conspicuously, in a validation notice mailed by the debt collector to the consumer~~."

This proposal imposes the new disclosure requirements prospectively, protecting all consumers about which a debt collector may communicate with a consumer reporting agency while simultaneously avoiding the unnecessary and costly expense to duplicating confusing consumer disclosures.

8. <u>The Proposal's Use of Clarifying Language Creates Unintended Negative Consequences</u>

a. The Proposal Rule Now Distinguishes Between "Consumer" And "New York City Consumer" Without Defining the Latter

For the first time in its rules for debt collectors, the Department uses the phrase "New York City" to modify the term "consumer" in several places throughout the proposal. Yet, the proposal does not define the new term "New York City consumer" and does not explain how that term means something different than the defined term, "consumer." *See, 6 RCNY 5-76.* Although it may seem intuitive, the use of modifying language "New York City" to describe consumers effectively changes the definition of the unmodified term "consumer" throughout the City's rules. These terms cannot mean the same thing; else it would be superfluous to modify the term "consumer" with the phrase "New York City." *See 6 RCNY 5-76.* The Department's introduction of the phrase "New York City" to modify the term "consumer" may appear to serve as an attempt at linguistic precision, but could lead to unintended or confused interpretations of the rules if not used consistently (or otherwise specifically defined).

The proposal uses both terms "New York City consumer" and "consumer" throughout, but not interchangeably. For example, under proposed section 5-77(e)(6) a debt collector may not, after the institution of debt collection procedures, communicate with a New York City consumer without disclosing the debt collector's name. Does this mean debt collectors are not required to disclose their name *unless* they are communicating with a New York City consumer? What if the debt collector is communication only with a "consumer" and not a "New York City consumer?" Is disclosure of the collector's name required by the proposal when communicating only with a "consumer?"

A second example of how inconsistent use of these two terms leads to anomalous results can be found in proposed section 5-77(f)(2)(i) Delivery of Validation Notices. This section requires a debt collector to:

> ". . .deliver written disclosures under (f)(1) of this section in the following manner:
>
> (i) a debt collector must deliver to consumers validation notices and the itemization of the debt by U.S. Mail or delivery service."

However, the disclosure requirements described in the newly proposed section (f)(1) do not apply to *all consumers* but instead apply only to "New York City consumers," to wit:

> *"Validation Notice*. Within five days after the initial communication with a *New York City consumer* in connection with the collection of any debt, a debt collector must send the consumer a written notice. . . "

(Emphasis added.) The difference in these two terms creates an internal inconsistency in the rule resulting in confusion about which consumers should be receiving disclosures – all consumers, or only New York City consumers? If these terms mean the same thing, then the proposal should not use different language. Again, in proposed rule 5-77(f)(6), this section requires debt collectors to provide verification only to "New York City consumers" in the first sentence, but refers only to "the consumer" throughout the remainder of the paragraph.

b. CRC Proposes to Edit The Definition Of "Consumer" to Include A Reference To "New York City" And Then Eliminate All References to "New York City" Throughout The Proposal.

If the terms "consumer" and "New York City consumer" mean the same thing throughout the proposal, then clarity can be achieved by editing the definition of "consumer" to include "New York City consumer" instead of using the modifying language "New York City" ad hoc throughout the proposal. The current definition of "consumer" under the rules is:

> "Consumer. The term "consumer" means any natural person obligated or allegedly obligated to pay any debt." *6 RCNY 5-76.*

CRC proposes to edit this definition as follows:

"Consumer. The term "consumer" means any natural person, residing in New York City, obligated or allegedly obligated to pay any debt.

By adding the language, "residing in New York City," to the definition of "consumer," the rules make clear that each time the word "consumer" is used throughout the rules, it means a New York City consumer. This language solves the problem of inconsistent use of the two terms and eliminates the possibility that those terms might have different meanings.

c. The Proposed Rule Now Prohibits Electronic Communications From Being "Writings"

Proposed section 5-77(b)(4)(i) now removes the possibility that an electronic communication may satisfy the obligation to do something "in writing." The proposed section states in part:

> "(b) **Communication in connection with debt collection.** A debt collector, in connection with the collection of a debt, must not:
>
> ***
> (4) Communicate with a consumer with respect to a debt if the consumer has notified the debt collector that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt. . . .The debt collector may, however:
>
> (i) Communicate with the consumer once in writing <u>or by electronic means</u>:
> 1. to advise the consumer that . . ."

(Emphasis added.) This section effectively, albeit unintentionally, changes the meaning of "in writing" throughout the entirety of section 5-77 by adding the language "or by electronic means" after the phrase "in writing." The language creates *two* methods of communicating with consumers under this section, the first method is "in writing" and the second "by electronic means." Communicating with a consumer "in writing" must necessarily exclude communicating with the consumer "by electronic means" else there would be no need to add this language i.e. the added language would be superfluous. Under the proposed language, "writings" necessarily exclude electronic communications.

The impact of this language is to change the meaning of "in writing" *everywhere else* the phrase "in writing" is used to exclude the possibility that "in writing" could also be electronic. If the phrase "in writing" is to bear the same meaning throughout the rules, then anything that must be done "in writing" elsewhere in the rules may not be done electronically. For example, consistent interpretation of "in writing" would prohibit a consumer from providing revocable consent via email, or through a web site, or via a text message under proposed section 5-77(b)(5)(i)(B) ("the debt collector obtains revocable consent from the consumer *in writing. . .").* This result is hardly consistent with the subject matter of proposed sections 5-77(b)(5)(i)(B) and (C) which specifically contemplate a consumer's use of electronic mail, text messaging, and social media to communicate with a debt collector.

A more significant example of the unintended impact of excluding electronic communications from the meaning of "in writing" is found in section 5-77(f)(1)(iii) wherein the rule describes how a consumer may exercise their rights to dispute a debt by notifying "the debt collector *in writing* within the thirty-day period . . ." If "in writing" excludes electronic communications, then consumers cannot exercise their rights under 5-77(f)(1)(iii) via email, text message, social media, or any other form of communication fairly considered to be "electronic" in nature. This is not how the rules operated prior to this proposal and not likely the intended consequence of adding the otherwise benign "or by electronic means" to the end of section 5-77(b)(4)(i).

d. CRC Proposes to Eliminate The Words "or by electronic means" to Proposed Section 5-77(b)(4)(i) To Avoid Confusion About The Meaning of "in writing."

Elimination of the words "or by electronic means" in proposed section 5-77(b)(4)(i) avoids confusion about the meaning of the phrase "in writing." CRC proposes to remove that language from the proposal as follows:

(i) Communicate with the consumer once in writing ~~or by electronic means~~:
2. to advise the consumer that . . ."

From:	Susan Shin
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Comment on proposed amendments to debt collection rules
Date:	Wednesday, June 11, 2025 8:08:17 AM
Attachments:	New Economy comment on 2025 DCWP proposed amendments to debt collection rules_FINAL.pdf

Hello - my apologies, I meant to send these last night and realized this morning that I had forgotten to do so. I am sending them now in hopes that you will be able to accept them for consideration. Thank you.

Susan Shin

--
Susan Shin (she/her)
Legal Director
New Economy Project
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[redacted]

June 10, 2025

By email to Rulecomments@dcwp.nyc.gov

Re: Proposed Amendments to New York City Department of Consumer and Worker Protection Rules Relating to Debt Collectors

To whom it may concern:

New Economy Project appreciates the opportunity to comment on the Department of Consumer and Worker Protection's (DCWP) 2025 proposed amendments to its debt collection rules, which include vital protections for New Yorkers and will help curb debt collection abuses by both original creditors and third-party debt collectors.

New Economy Project's mission is to build an economy that works for all, based on cooperation, equity, social and racial justice, and ecological sustainability. For 30 years, we have worked closely with community groups across New York City and State to challenge discriminatory economic practices that harm communities of color and perpetuate segregation, poverty, and inequality. For two decades, we have operated a free legal assistance hotline serving low-income New Yorkers and helped thousands of people aggrieved by abusive debt collection practices, including debt collectors' refusal to provide basic information about alleged debts, excessive and harassing phone calls, and attempts to seize exempt income.

We commend DCWP for clarifying that the rules apply to original creditors and proposing amendments to more explicitly set forth original creditors' duties under the rules. This coverage of original creditors fills a critical gap left by the Fair Debt Collection Practices Act and Regulation F (which do not apply to original creditors when they are collecting debts in their own name) and by the NYS Department of Financial Services' debt collection rules (23 NYCRR 1) (which similarly do not apply to original creditors). We also welcome DCWP's clarifications related to verification of debts, including requirements related to sending a notice of unverified debt.

We endorse the National Consumer Law Center's (NCLC) comment on the proposed amendments and its recommendations, which are necessary to clarify the DCWP rules' intent and avoid ambiguity that could undermine that intent. We particularly support NCLC's recommendations regarding the following:

Definition of debt collector: We strongly support NCLC's recommendation to reformat the definition of "debt collector" for clarity and to delete the phrase "after the initiation of debt collection procedures," which we believe is redundant and ambiguous.

Unconscionable and Deceptive Trade Practices: We strongly support NCLC's recommendation to delete this same phrase – "after the initiation of debt collection procedures" – from the "Unconscionable and Deceptive Trade Practices" section. We agree with NCLC that this phrase is unnecessary to clarify the extent of the rules' application to original creditors, and we share NCLC's concern that this phrase may inadvertently authorize prohibited conduct. For example, the phrase may allow a third-party debt collector to argue that its conduct, even if unconscionable and deceptive, is not prohibited by DCWP's rules because it was **part** of "the initiation of debt collection procedures" and did not take place "**after**" the initiation of debt collection procedures."

Delivery of validation notices: We strongly support NCLC's recommendation to prohibit debt collectors from providing validation notices as attachments to electronic communications, given widespread concerns about opening attachments to suspicious emails or emails from unknown or unfamiliar senders.

Time-barred debt disclosures: Like NCLC, we support the proposed amendments that would clarify that debt collectors must provide the time-barred debt disclosure in writing, before any other communication, and that would require the time-barred debt disclosure to be translated into any other language that the debt collector uses to communicate with the consumer.

As stated in our November 2023 comments on DCWP's previous proposed amendments to its debt collection rules (see attached), we (like NCLC) believe that collection on time-barred debt should be prohibited and that disclosures provide only limited benefit and may inadvertently confuse or mislead people. We again urge DCWP to improve upon Regulation F and current New York State requirements by prohibiting the collection of time-barred debt, rather than merely requiring disclosures that a debt is time-barred.

To the extent that DCWP continues to allow the collection of time-barred debt, we support requiring disclosure of the fact that a debt is time-barred, but echo NCLC's recommendation that DCWP impose a strict-liability standard on debt collectors for when they must provide a time-barred debt disclosure, and not a weaker "knows or has reason to know" standard. We also agree with NCLC that the words "You have a right to know that" should be deleted, for clarity.

We reiterate other concerns that we raised in our November 2023 comments—that the statements "This means you **can't** be sued to collect [this debt]" and "A court **will not enforce** collection" (emphases added) are in fact false and may therefore mislead people. A debt collector **may** still sue someone on a time-barred debt, albeit illegally, and a court **will** certainly enforce collection of any judgment a debt collector manages to obtain on a time-barred debt, on default or because the defendant was otherwise unable to raise a statute of limitations defense. We recommend deleting "A court will not enforce collection" altogether and adopting the following disclosure language: "This debt expired. It is illegal for you to be sued on this debt. IF YOU ARE SUED ILLEGALLY," etc.

Thank you for the opportunity to comment. Please feel free to contact me at susan@neweconomynyc.org with any questions.

Sincerely,
/s/ Susan Shin, Legal Director

NEW ECONOMY PROJECT

November 29, 2023

By email to Rulecomments@dcwp.nyc.gov

Re: Proposed Amendments to New York City Department of Consumer and Worker Protection Rules Relating to Debt Collectors

To whom it may concern:

New Economy Project appreciates the opportunity to comment on the Department of Consumer and Worker Protection's (DCWP) 2023 revised proposed amendments to its debt collection rules. The proposed amendments—along with the state Consumer Credit Fairness Act, which went into effect in April 2022 and addresses certain abuses in the collection of debt through lawsuits—will help curb debt collection abuses by third-party debt collectors and address certain gaps left by the Consumer Financial Protection Bureau's debt collection rule, Regulation F.

New Economy Project's mission is to build an economy that works for all, based on cooperation, equity, social and racial justice, and ecological sustainability. For more than 25 years, we have worked closely with community groups across New York City and State to challenge discriminatory economic practices that harm communities of color and perpetuate segregation, poverty, and inequality. For years, our organization has operated a free legal assistance hotline serving low-income New Yorkers and assisted thousands of people aggrieved by abusive debt collection practices, including debt collectors' refusal to provide basic information about alleged debts, excessive and harassing phone calls, and attempts to seize exempt income.

We note that our comments are unavoidably preliminary as the state Department of Financial Services (DFS) has not yet reissued its own proposed amendments to its debt collection rules; we are therefore concerned about potential conflicts between DFS's and DCWP's rules, particularly with respect to statute of limitations disclosure requirements. With this caveat, we support certain of DCWP's proposed amendments, but also urge DCWP to make critical changes and work with DFS to harmonize DCWP's and DFS's rules.

The proposed amendments include vital protections for New Yorkers. In particular, we strongly support the following proposed amendments, which would:

- Add important provisions regarding the collection of medical debt;
- Apply protections to debt collectors' attempted communications, not just communications (*e.g.*, proposed NYC Admin. Code section 2-193);
- Limit debt collectors to three communications or attempted communications within a seven-day period **per consumer**, not per account (proposed 6 RCNY section 5-77(b)(1)(iv)(A));
- Require debt collectors, before furnishing a debt to a consumer reporting agency, to notify consumers that they may report the debt to a consumer reporting agency (proposed 6 RCNY section 5-77(e)(10));
- Require debt collectors to include notices to buyer/transferee/assignee regarding debts that were paid or discharged in bankruptcy or could not be verified (proposed 6 RCNY sections 5-77(e)(11) and (13));
- Require debt collectors to provide the validation notice in writing (proposed 6 RCNY section 5-77(f)(1)) and prohibit debt collectors from providing the validation notice exclusively by electronic means (proposed 6 RCNY section 5-77(f)(2)(i));
- Confirm that consumers may dispute debts and request original creditor information "at any time during the period in which the debt collector owns or has the right to collect the debt" (proposed 6 RCNY sections 5-77(f)(6) and (8));
- Require debt collectors to verify a debt within 45 days of receiving a dispute or request for verification from a consumer (proposed 6 RCNY section 5-77(f)(6));
- Require debt collectors to include in their records whether a judgment in a case was on default or on the merits (proposed 6 RCNY section 2-193(b)(3)); and
- Prohibit debt collectors from falsely representing that consumers may not dispute a debt or request verification by oral communication (proposed 6 RCNY section 5-77(d)(21)).

In addition, we urge DCWP to make the following critical changes to help ensure that the protections intended by the proposed amendments are meaningful for everyday New Yorkers:

1. **Prohibit the collection of time-barred debt, or at least limit collection of such debt to written communications; and prohibit the sale of time-barred debt.**

We urge DCWP to improve upon Regulation F and current New York State requirements by prohibiting the collection of time-barred debt, rather than merely requiring disclosures that a debt is time-barred. At the very least, DCWP should limit collection of time-barred debt to only written communications, as DFS proposed to do in its initial proposed amendments.

Because of the huge potential for errors and deception in the collection of time-barred debt, we also urge DCWP to prohibit selling, transferring, or placing time-barred debt for collection, rather than merely requiring debt collectors to include notices to debt buyers or subsequent debt collectors regarding debts that are expired (proposed 6 RCNY section 5-77(e)(12)).

2. **Clarify that debt collectors must pause collection activity after a consumer's dispute until they provide verification, regardless of when the consumer submitted their dispute (proposed 6 RCNY section 5-77(f)(6) and (7)); and eliminate the loophole that would allow debt collectors to evade the requirement to provide a notice of unverified debt (proposed 6 RCNY section 5-77(f)(7)).**

Section 20-493.2(a) of the New York City Administrative Code requires debt collectors to pause collection activity following a consumer's request for verification of an alleged debt until they provide verification; and, significantly, does not impose any time limit on the consumer's ability to request verification. We commend DCWP for proposing to amend 6 RCNY section 5.77(f)(6) accordingly, to explicitly allow consumers the right to dispute an alleged debt "at any time during the period in which the debt collector owns or has the right to collect the debt." In keeping with section 20-493.2(a) of the Administrative Code, however, we urge DCWP to clarify that debt collectors must pause collection activity after a consumer's dispute regardless of when the consumer submitted their dispute. Currently, the proposed rule would deny consumers a pause (or cessation) in collection activity unless the debt collector failed to provide the consumer **both** the itemization required by proposed6 RCNY section 5-77(f)(1)(vii) **and** a timely written verification of the debt (see proposed 6 RCNY section 5-77(f)(6)).

Similarly, we welcome the requirement that debt collectors would have to provide a "notice of unverified debt" and stop collecting on a debt if they are unable to verify the debt. However, the proposed amendments would allow debt collectors to evade this requirement by merely providing an itemization of the debt. This would constitute a significant weakening of DCWP's current verification requirements, and we strongly urge DCWP to eliminate this loophole as well.

3. **Clarify the statute of limitations disclosure (proposed 6 RCNY section 5-77(i)).**

To the extent that DCWP continues to allow the collection of time-barred debt, we support requiring disclosure of the fact that a debt is time-barred, as DCWP has proposed. We recommend, however, that DCWP significantly clarify and simplify its proposed safe-harbor language, which may confuse and mislead many people.

For example, the proposed disclosure would unhelpfully have debt collectors **both** tell people that they cannot be sued on a time-barred debt **and** instruct people as to what to do if they are sued. The statement "A court will not enforce collection" may also mislead people since a court will **certainly** enforce collection of any judgment a debt collector succeeds in obtaining on a time-barred debt, on default or because the defendant was otherwise unable to raise a statute of limitations defense.

DCWP should also require different disclosure language depending on whether the applicable statute of limitations (SOL) may or may not be revived by payment or acknowledgment. As of May 2022, the statute of limitations for debts arising from consumer credit transactions, as defined by section 105(f) of the Civil Practice Law and Rules (CPLR), cannot be revived by payment or by written acknowledgement (CPLR 214-i, as added by the Consumer Credit Fairness Act).

To address the above concerns, we recommend the following distinct disclosures, which we have also proposed in nearly identical form to DFS:

- For time-barred debts on which the statute of limitations cannot be revived by payment or acknowledgment under CPLR 214-i: "NYC regulations require us to disclose the following: It is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old. To learn more about your legal rights and options, consult an attorney or a legal assistance or legal aid organization."

- For time-barred debts on which the statute of limitations may be revived by payment or by written acknowledgment pursuant to General Obligations Law section 17-101: "NYC regulations require us to disclose the following: It is illegal for a creditor or debt collector to sue you to collect on this debt because this debt is too old. However, be aware that if you make a payment on this debt or admit in writing that you owe this debt, then you will give the creditor or debt collector more time under the law to sue you to collect on this debt. To learn more about your legal rights and options, consult an attorney or a legal assistance or legal aid organization."

4. **Strengthen provisions regarding collection of medical debt.**

We applaud DCWP for proposing to add critically important provisions to protect New York City residents against abuses in the collection of medical debt. We endorse the recommendations that the National Consumer Law Center and Community Service Society make in its comments to strengthen the provisions in the proposed amendments pertaining to medical debt.

5. **Do not weaken recordkeeping requirements regarding service of process (proposed NYC Admin. Code section 2-193(b)(3)).**

We are concerned by DCWP's proposal to relieve debt collectors from the requirement that they maintain the following information in their record of all cases filed in court to collect a debt: 1) the name of the process server who served process on the consumer, 2) the date, location, and method of service of process, and 3) the affidavit of service that was filed.

Rampant sewer service problems continue to plague defendants in debt collection lawsuits, and debt collectors—particularly certain debt collection law firms—often fail to produce affidavits of service when defendants raise a service defense or challenge a default judgment in court. Though debt-collector plaintiffs legally bear the burden of establishing a prima case that service was proper, courts sometimes improperly shift the burden to defendants to establish that service was **not** proper and unfairly fault defendants for not being specific enough in describing why service was improper, even when they cannot benefit from seeing the affidavit of service.

As a matter of public policy, DCWP should maintain, and not weaken, the existing requirement that debt collectors keep this basic information and documentation concerning their alleged service of process in debt collection lawsuits—especially given DCWP's critical role in regulating process servers and curbing these rampant due process abuses.

6. **Clarify the itemization requirement (proposed 6 RCNY section 5-77(f)(1)(viii)).**

We commend DCWP for continuing to require that debt collectors provide specific information in response to a dispute or request for verification, in contrast to the vagueness of the verification requirement in the Fair Debt Collection Practices Act and Regulation F. We recommend, however, that DCWP clarify the relevant language in its proposal. For example, subparagraph (D) of proposed section 5-77(f)(1)(viii) ("[t]he total amount asserted to be due on the date of the itemization") appears to be duplicative of subparagraph (A) ("[t]he total amount of the outstanding debt asserted to be due on the itemization reference date"); subparagraph (D) also uses the undefined term "date of the itemization." Also, it is not entirely clear what DCWP intends by proposing that debt collectors "may list the 'principal balance' as the total amount of the outstanding debt asserted to be owed by the consumer on the itemization reference date" (see language in proposed section 5-77(f)(1)(viii) following subparagraph (D)). It appears that DCWP may be proposing to allow the "total amount" allegedly owed on the itemization reference date to serve as a substitute for the "principal balance" disclosure required by NYC Admin. Code section 2-190(b) (stating that debt collectors must provide written documentation "itemizing the principal balance of the debt that remains or is claimed or alleged to remain due, among other information"). We request that DCWP clarify this language, especially as it appears to be proposing a new interpretation of the statutory language in section 2-190(b).

7. **Require employer liability (proposed 6 RCNY section 5-77(g)).**

We are deeply concerned that DCWP appears to propose granting employers of debt collectors a wholesale carveout from liability for violations of section 5-77, prohibiting "Unconscionable and Deceptive Trade Practices." DCWP's public notice containing the latest proposed amendments presents section 5-77(g) as if it currently reads "Reserved," when in fact the first sentence of 6 RCNY section 5-77(g) currently reads as follows: "*Liability.* The employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77." (DCWP also proposes deleting other provisions mentioning employer liability, *e.g.*, sections 5-77(a), (b), (d), and (e)(7).)

As a matter of public policy, we strongly oppose deleting from section 5-77(g) the rule that "[t]he employer of a debt collector is liable for the debt collector's violation of 6 RCNY § 5-77." Employers of debt collectors must be held accountable for their employees' acts and take measures to ensure their employees' compliance with all applicable debt collection rules, including section 5-77, which prohibits "Unconscionable and Deceptive Trade Practices."

We do support deleting the second sentence of section 5-77(g), which currently reads, "A debt collector who is employed by another to collect or attempt to collect debts shall not be held liable for violation of 6 RCNY § 5-77." Debt collectors should not be able to escape liability for violation of section 5-77, prohibiting "Unconscionable and Deceptive Trade Practices," simply because they are employed by another to collect or attempt to collect debts.

8. Require debt collectors to provide meaningful language access services.

In our many years of experience helping low-income New York City residents, including many with limited English proficiency, we have yet to hear of any debt collectors who have provided required written notices and other correspondence in the consumer's primary language. DCWP's current rules do not, and its proposed amendments would not, affirmatively require debt collectors to have and offer language access services.

Though we strongly support DCWP's proposed requirement that a validation notice and verification letter or "unable to verify notice" be translated into the language requested by the consumer, this proposed requirement would apply only to those debt collectors that in fact offer language access services; it is meaningless if debt collectors may simply choose not to offer language access services as a way to avoid DCWP's language access requirements.

Especially in a place as diverse as New York City, debt collectors should be required to provide language access services in at least the most common languages spoken in New York City. At a minimum, DCWP should require that where the original contract giving rise to the alleged debt is in a language other than English or where a debt collector uses a language other than English in the initial oral communication with a consumer, the debt collector must provide required notices in that language.

In addition, we endorse the National Consumer Law Center's recommendations in its comment pertaining to language access.

9. Provide a private right of action.

DCWP's rules are meant to protect New York City residents, and noncompliance may subject debt collectors to enforcement. Because DCWP has limited enforcement capacity, the rules should include a private right of action, to extend the rules' reach, alleviate DCWP's burden, and ensure that New Yorkers harmed by debt collectors are fully able to vindicate their rights.

Thank you for the opportunity to comment. Please feel free to contact me at susan@neweconomynyc.org with any questions.

Sincerely,
/s/ Susan Shin, Legal Director

From:	Katie Borchers
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Comment regarding Proposed Amendments to Rules Relating to Debt Collectors
Date:	Monday, June 9, 2025 5:19:13 PM
Attachments:	Outlook-2y0j3xdv.png

DCWP Rule Comments Team

Please see below for my comments for today's hearing.

Katie, RN

My name is Katie Borchers. I am an agency owner, former nurse, and current President of the New York State Collectors Association.

As a nurse, I'm passionate about the consumer and patient experience in the accounts receivable industry. As an agency owner, compliance is one of my key focuses. These rules make it difficult for me to accomplish these goals.

Consumers perceive good communication and customer service in a variety of ways. With busy lives, many times multiple communication methods and attempts are needed to connect and resolve. Making changes that restrict certain forms of communication could harm consumers and this is something that should be carefully studied and evaluated before any arbitration restrictions are put in place.

Letters, phone calls, email and text messages allow all businesses to reach consumers. Ours is no different and these rules prevent these lines without an entry point of a phone call. I can't remember the last time I answered my phone from an unknown number. However, I read texts and emails daily from unknown sources.

When collections cannot happen in our industry, our clients, businesses with outstanding receivables, are forced to escalate to public legal measures. Consumers ultimately lose out the most. Some of the negative impacts are less access in the future – if a bill is not paid for non-emergency medical care for example, a dentist or doctor does not have to serve that consumer in the future. Similarly, if a small community financial institution such as a credit union cannot collect on payments due to their membership, the costs of their products such as mortgages, credit cards, and loans will go up, to make up for it.

Please consider the consumer experience. With a variety of generations and tech ability, many communication entry point tools are needed. This helps connections that lead to faster, more amicable resolution.

Katie Borchers, MSHA RN
President, Beyond Green Solutions
President & Legislative Chairwoman, New York State Collector's Association
[redacted]
Empathetic Collections = Increased Recovery
Beyond Green Solutions LLC
Uniting Collections, Empathy, & Technology

From:	April Kuehnhoff
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Comments on debt collection amendments
Date:	Tuesday, June 10, 2025 1:17:35 PM
Attachments:	NCLC Comments 2025 Proposed DCWP Debt Collection Amendments 2025 06 10.pdf

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Hello,

Attached please find a pdf version of our comments.

Thank you.

April Kuehnhoff (she/her)
Senior Attorney
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110
[redacted]

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Fighting Together for Economic Justice

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NCLC.ORG

June 10, 2025

New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
rulecomments@dcwp.nyc.gov
VIA E-mail

RE: 2025 proposed amendments to rules related to debt collectors

Dear Department of Consumer and Worker Protection:

My name is April Kuehnhoff, and I am a Senior Attorney at the National Consumer Law Center ("NCLC"),[1] where my work focuses on federal and state advocacy related to fair debt collection.

We submit these comments to support the Department of Consumer and Worker Protection's ("DCWP") efforts to strengthen its debt collection regulations and to offer suggestions for additional improvements and clarifications. The comments below respond to the 2025 proposed amendments to rules related to debt collection,[2] updating the comments that NCLC previously submitted in response to the DCWP's 2022[3] and 2023[4] proposed amendments.

Stronger Consumer Protections are Not Preempted by the FDCPA or Regulation F

[1] The National Consumer Law Center ("NCLC") is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 50 years NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support. Fair debt collection has been a major focus of the work of NCLC, which publishes Fair Debt Collection (10th ed. 2022), a comprehensive treatise to assist attorneys and debt collectors to comply with the law, and Collection Actions (5th ed. 2020), detailing defenses to consumer debts.

[2] Available at: https://rules.cityofnewyork.us/rule/further-amendments-of-debt-collector/.

[3] Available at: https://www.nclc.org/resources/nycs-proposed-amendments-to-rules-related-to-debt-collectors/.

[4] Available at: https://www.nclc.org/resources/comments-regarding-new-york-citys-2023-proposed-amendments-to-rules-related-to-debt-collectors/.

Federally, debt collection is regulated by the Fair Debt Collection Practices Act ("FDCPA")[5] and federal debt collection regulations issued to implement the FDCPA ("Regulation F").[6] Regulation F has many gaps and weaknesses,[7] and we commend the DCWP's proposal for its efforts to fill some of these gaps.

Stronger consumer protections are *not* preempted by the FDCPA, which says:

> This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.[8]

Regulation F contains similar language, and also clarifies that provisions in Regulation F - like FDCPA provisions - do not preempt stronger state consumer protections.[9]

The FDCPA and Regulation F define the term "state" to include a "political subdivision" of a state.[10] Thus, under federal law, New York City has the same authority as a state to enact consumer protections that exceed the baseline created by the FDCPA and Regulation F.

Coverage for Creditors

The proposed amendments seek to clarify coverage for creditors collecting on their debts after initiating debt collection procedures. We applaud the DCWP for clarifying that its debt collection regulations cover creditors.

Covering debt collection by creditors collecting their own debts fills an important consumer protection gap because the FDCPA and Regulation F do not cover original creditors collecting their own debts in their own name.[11] This gap in coverage means, for example, that some credit card companies authorized as many as 11 attempted debt collection phone call per day, while debt collectors covered by the FDCPA that were hired to collect the same account would generally be limited to 7 attempted calls in a 7 day period.[12]

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[5] 15 U.S.C. §§ 1692-1692p.

[6] 12 C.F.R. Part 1006.

[7] *See, e.g.,* National Consumer Law Center, CFPB Changes Need to Prevent New Debt Collection Rules from Hurting Consumers (Jan. 2021), available at: https://www.nclc.org/resources/issue-brief-cfpb-changes-needed-to-prevent-new-debt-collection-rules-from-hurting-consumers/.

[8] 15 U.S.C. § 1692n.

[9] 12 C.F.R. § 1006.104.

[10] 15 U.S.C. § 1692a(8); 12 C.F.R. § 1006.2(*l*).

[11] *See* 15 U.S.C. § 1692a(6).

[12] *Compare* Consumer Financial Protection Bureau, The Consumer Credit Card Market 138 (Oct. 2023) *with* 12 C.F.R. § 1006.14(b)(2).

Several states have coverage for creditors in their debt collection statutes.[13] These state laws clarify that creditors like buy now pay later (BNPL) lenders, credit card companies, landlords, utilities, and medical providers cannot engage in abusive collection practices – holding them to the same standards whether they collect themselves, sell the account to debt buyers, or place the accounts with third party debt collectors.

Proposed Amendment to the Definition of Debt Collector

The proposed amendments would change the definition of debt collector to say:

> The term "debt collector" means any person, including any natural person or organization, including a debt collection agency, who:
>
> . . .
>
> (B) after the initiation of debt collection procedures, regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person, or debts owed or due or asserted to be owed or due to the person collecting or attempting to collect the debts.

For clarity, we recommend rewriting (B) as follows:

> (B) regularly collects, or attempts to collect, directly or indirectly, debts owed or due or assert to be owed or due to:
>
> > (i) another person, or
> > (ii) any creditor collecting or attempting to collect debts after the initiation of debt collection procedures.

As originally drafted, the provision would have limited the definition of "regularly collects" for all parties and not just creditors collecting their own debts.

Unconscionable and Deceptive Trade Practices

The proposed amendments would limit regulations prohibiting unconscionable and deceptive trade practices to those that occur "after the initiation of debt collection procedures." To the extent that DCWP intends to limit coverage for creditors collecting their own debts to collection activities "after the initiation of debt collection procedures," we believe that the amendment to the definition of debt collector has already achieved this. We recommend deleting "after the initiation of debt collection procedures" to avoid potentially authorizing conduct by other debt collectors that is currently prohibited.

Times Presumed to be Convenient

---

[13] *See* National Consumer Law Center, Fair Debt Collection § 16.2.3.3.1 (10th ed. 2022), *updated at* www.nclc.org/library (noting coverage for creditors in California, Connecticut, Florida, Maryland, Michigan, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Texas, West Virginia, and Wisconsin).

The proposed amendments would prohibit communications between 9:00 pm and 8:00 am. This appears to also prevent a debt collector from contacting consumers during these hours when a consumer asks to be contacted at such times. This prohibition is at odds with the language "in the absence of knowledge or circumstances to the contrary." We recommend clarifying that debt collectors can communicate between 9:00 pm and 8:00 am where the consumer requests communication at such time.

Electronic Communication by Original Creditors

The proposed amendments would allow original creditors collecting their own debt to continue communicating with consumers that provided consent to communicate electronically. The proposed amendment would require the original creditor to inform consumers "in writing" of their right to revoke such consent if they collect after the institution of debt collection procedures. We recommend allowing the notice to be provided electronically where the consumer previously consented to receive electronic messages from that original creditor.

Delivery of Validation Notice

The proposed amendments would change the requirements related to delivery of the validation notice to specify certain information that must be contained in the body of the electronic communication where a validation notice is attached to an electronic communication. We recommend not allowing validation notices to be provided as attachments to electronic communications. Experts recommend not downloading attachments or clicking on links from unknown senders to avoid computer viruses and scams. Fraudulent actors do impersonate legitimate debt collectors, raising concerns about such fraudulent actors using messages about alleged debt to trick consumers into opening or downloading malware.

Verification of a Medical Debt

The proposed amendment would modify the debt collector's obligation to provide information to a consumer in response to the consumer's first dispute by noting that it would need to provide the consumer with information "readily" available to the debt collector. This term is not defined, leaving it open to interpretation. We anticipate that debt collectors will argue that they need not produce things like the itemized bill held by the medical provider since this is not "readily" available. We recommend deleting "readily."

The proposed amendment also includes a provision that "a financial institution is not obligated to provide financial assistance policy information to verify the medical debt." The regulation already provides that "[m]edical debt does not include debt charged to a credit card unless the credit card is issued under an open-ended or closed-end plan offered specifically for the payment of health care services, products, or devices provided to a person." Thus, financial institutions providing general-purpose credit cards are already excluded from coverage for provisions that relate to medical debt. Financial institutions that provide an "open-ended or closed-end plan offered specifically for the payment of health care services, products, or devices" should not be excluded from the obligation to provide financial assistance policy information to verify the medical debt. We recommend deleting this provision.

Time-Barred Debt

We support the proposed amendment's clarification that the time-barred debt disclosure must be provided, in writing, before any other communication.

We support the proposed new requirement that the time-barred debt disclosure must be translated into any other language used by the debt collector to communicate with the consumer.

We support the clarification in the disclosure that suit on a time-barred debt is illegal. We recommend deleting "You have a right to know that" and just start with "This debt expired." We also believe that the statement that "[a] court will not enforce collection" is misleading since a court could enter a judgment against the consumer on a time-barred debt if the consumer does not raise statute of limitations as an affirmative defense. We recommend rewriting the beginning of this disclosure to say "This debt expired. It is illegal for you to be sued on this debt. IF YOU ARE SUED ILLEGALLY . . ."

As stated in our previous comments, we believe that all time-barred debt collection should be abolished and that disclosures will not be clear for many consumers. If disclosures are going to be used, we urge the DCWP to use a strict liability standard for when they should be provided instead of a "knows or has reason to know" standard.

Thank you for your time and attention to these comments. Please feel free to contact me at the email address below if you have any questions.

Sincerely,

April Kuehnhoff
Senior Attorney
akuehnhoff@nclc.org

From: Adira Siman
To: rulecomments (DCWP)
Cc: Ortiz, Carlos (DCWP)
Subject: [EXTERNAL] Comments on Proposed Debt Collector Rules
Date: Tuesday, June 10, 2025 4:01:26 PM
Attachments: DCWP Debt Collector Rules 2-Partnership for NYC Testimony_20250610-FINAL.pdf

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Please see attached comments on the proposed rules on debt collectors.
-Adira

Adira M. Siman
Senior Vice President and General Counsel
Partnership for New York City
[redacted]

PARTNERSHIP for New York City

Testimony of the Partnership for New York City
Department of Consumer and Worker Protection
Proposed Debt Collector Rules
June 10, 2025

Thank you for the opportunity to submit comments on the proposed debt collector rules and the related rules slated to take effect October 1, 2025. The Partnership for New York City mobilizes private sector resources and expertise to advance New York City's standing as a global center of economic opportunity, upward mobility, and innovation. It is a nonprofit organization whose members are business leaders and employers that support nearly one million jobs in New York City and deliver approximately $236 billion in economic output.

The Partnership strongly supports the clarification in the proposed rules to distinguish between originating creditors and debt collectors. At the same time, the language in the proposed rules still overlooks the fact that banking institutions have a very different relationship with their customers than third-party debt collectors. Unlike third-party debt collectors, bank relationships with customers are strictly regulated by federal and state government. Moreover, banks have multiple and ongoing relationships with customers that make compliance with the proposed rules unnecessarily burdensome.

The high costs of doing business in New York City is already resulting in banks relocating jobs to lower cost jurisdictions. Over-regulation is a major contributor to making the city a more difficult and expensive place for banks to operate. The proposed rules would involve compliance costs that would be needlessly expensive and interfere with banks' responsibility to help their customers manage credit risk.

The Partnership recommends that banking institutions be explicitly exempted from the proposed rules. In addition, we have the following specific concerns and recommendations for amendments to the proposed rules:

Definition of "Debt Collection Procedures"

Concern: Paragraph (2) includes, for 30-day accounts for which periodic statements are not required, the creditor "threaten[ing] to take legal action against the consumer[.]" The term "legal action" is broad and should be narrowed and clarified. It could, for example, discourage a communication to inform a customer of the consequences of default. (2)

Recommendation: replace "threatened to take legal action" with "filed a legal action."

Concern: The phrase "selling the debt" in paragraph (4) appears intended to refer to debt buyers, but could also encompass portfolio acquisitions and mortgage transfers, not just debt sales to collection agencies.

Recommendation: change to "selling the debt to a debt collection agency".

Concern: Paragraph (4) also includes the transfer of a debt to another unit or department for collection by an original creditor. This potentially captures routine internal transfers between departments like Customer Service, Collections, and Recovery. With these types of transfers, the original creditor continues to service the loan under its own name and the customer is completely unaware that a different unit is handling their loan. The customer's ability to contact the creditor or obtain information has not changed.

> Recommendation: Replace "with another department or unit for collection" with "with a separate third party collection agenc that initiates collection communications with the consumer."

Definition of Original Creditor and Originating Creditor

Concern: The definition lacks specificity. It does not address portfolio acquisitions, mergers, or situations where one entity performs servicing for another. It also fails to distinguish between performing and delinquent accounts. Banks acquiring current or early-stage delinquency accounts shouldn't be treated the same as debt buyers purchasing charged-off portfolios.

Recommendation: Specify that this definition includes only a person or entity that acquires accounts before charge-off and that intends to service accounts, not engage solely in recovery. The definition used in New York's Uniform Civil Rules for the District Courts is appropriate:

> "Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an original creditor's books as an asset and treated as a loss or expense." 22 NYCRR § 212.14-a.

Frequency of Communication in Connection with a Debt (§ 5-77(b)(1)(iii))

Concern: The proposed rules limiting how often an institution can contact consumers uses an overly broad definition of "excessive frequency." The proposed rules would include all types of communications (as opposed to just calls) and calculate the limit for each account a customer has with a bank. This definition could hinder the bank's ability to provide customer service and effective debt resolution.

Recommendation: Provide more flexibility in communication frequency for entities collecting their own debt, particularly for accounts with active consumer engagement.

Informing Consumers of Right to Revoke Consent to Communicate (§ 5-77(b)(5)(i)(B))

Concern: An original creditor collecting its own debt who communicates electronically with a customer and wants to continue to communicate about a debt would be required to notify the customer of their right to revoke the consent to communicate electronically. This would be unnecessarily duplicative if the bank has already obtained consent for electronic communication, especially where the bank has a history of communicating with the customer electronically and provides an option for the customer to opt out of such communications.

Recommendation: Remove the requirement to send the additional notice of a customer's right to revoke consent to electronic communication.

Communication During Work Hours (§ 5-77(b)(6))

Concern: The proposed rules would restrict all types of communications "at a time the debt collector knows or should know is during the consumer's work hours" unless prior written consent is provided. This expansive provision is unreasonable. A bank does not know a customer's work hours. Moreover, many types of communications can be viewed at a different time from when they are sent. The current proposal would prohibit a bank from sending an email to an email address at a public domain (*e.g.* Gmail) at 2 p.m. on a weekday unless they expressly know that the customer works different hours.

Recommendation: The proposal should retain the original language in this paragraph ("the consumer's place of employment, including") instead of striking that language and adding "a time the debt collector knows or should know is during the consumer's work hours, or [.]"

Reporting to Consumer Reporting Agencies (§ 5-77(e)(10))

Concern: The proposed rule would require banks to send a notice "in the medium of communication used to collect the debt" prior to sending the debt to consumer reporting agencies and wait 14 days after sending the notice while monitoring for notifications that the notice was undeliverable.

Banks often use multiple channels to communicate with customers. The proposed rule would thus require multiple notifications (*e.g.* text, email, phone, letter). This is redundant and provides no benefit to consumers.

Recommendation**:** Clarify that the creditor does not need to provide the notice in all of the methods with which it uses to communicate with the customer.

Moreover, the 14-day delay is unnecessary for creditors who have been continuously reporting account status (including performing and delinquent stages) under the Fair Credit Reporting Act (FCRA). This continuous reporting already provides consumers with notice and a transparent relationship. The delay could also lead to inaccurate reporting due to the need for manual processes to pause reporting.

Recommendation**:** Exempt original creditors who have been continuously reporting account status under FCRA from the 14-day delay requirement.

Validation of Debts (§ 5-77(f) and (f)(1))

Concern: Debt collectors would be required to send validation notices under the proposed rules. For bank customers, requiring debt validation notices serves no purpose except to create confusion. Customers already have established relationship with their bank creditors and have generally been receiving regular communications about their accounts. This notice requirement also duplicates or conflicts with rights under existing federal regulations (e.g., Fair Credit

Billing Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Truth in Lending Act) as well as federal agency oversight.

The exemption for entities subject to the Fair Credit Billing Act is too narrow, as it doesn't cover personal loans, student loans, or closed-end mortgages. This would result in inconsistent treatment of debts across a bank's loan portfolio.

Recommendation: Align the DCWP's validation notice requirements with existing federal regulations and agency oversight. Expand the exemption to Original Creditors in general to capture personal loans, student loans, and closed-end mortgages.

Notice of Unverified Debt (§ 5-77(f)(1)(iv))

Concern: An original creditor would be required to send a notice of unverified debt if they are unable to verify the debit within 60 days of a customer's request. This would create unnecessary customer confusion. The mandatory pause on collection efforts during the original validation period already protects consumer dispute rights. The complex history of some accounts may make a strict 60-day verification timeframe impractical.

Recommendation: Remove the requirement for a separate notice of unverified debt for original creditors.

Verification of Debt (§ 5-77(f)(7)(v)(B))

Concern: The proposed rules would require the collector to send records of all prior settlement agreements, even if they were never paid or not fully completed, in the verification of debt notice. Including information about failed or breached settlements is irrelevant, confuses consumers, and distracts from the purpose of the debt verification. It may also create the impression that the debt is negotiable or that the consumer is still eligible for an expired settlement.

Recommendation: Limit the required information to active or completed settlement agreements. The focus should be on confirming the current amount owed.

Time Barred Debts (§ 5-77(i))

Concern: Before communicating about a time-barred debt, a collector would be required to send a validation notice include a specified disclosure, follow a waiting period, and provide specified disclosures if subsequent communications occur after the initial one. Simply because the statute of limitations for filing a lawsuit has expired, does not mean that the underlying debt is discharged. The extensive requirements and restrictions would impose significant and unnecessary expense and operational challenges to collect on these debts. As a result, creditors may not reach out to their customers with offers to help resolve these debts which often remain on a customer’s credit report.

Recommendation: Simplify the proposed procedures for time-barred debt.

Effective Date

Concern: The current proposed effective date of October 2025 does not provide sufficient time for banks to implement the significant operational and technological change to comply with the proposed rules.

Recommendation: Make the effective date at least one year from adoption.

Thank you.

From: [redacted]
To: rulecomments (DCWP)
Subject: [EXTERNAL] Comments Seeking Clarity to NYC"s DCWP proposed amendments to debt collection rule
Date: Tuesday, June 10, 2025 10:49:31 AM

1. For a debt collector who is collecting on behalf of a hospital or covered medical entity, what documents would be responsive to the requirement under verification of the debt that the debt collector provide "a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer?" Additionally, what if these documents are not in the possession or not readily accessible by the debt collector but only in the possession of or accessible to its hospital client?

2. Is the debt collector required to provide to the consumer the financial assistance policy of its hospital client or covered medical entity even though it was previously provided by the hospital client and in the debt collector's validation notice to the consumer?

Holly Vu-Fulkerson
AD & Senior Counsel
Commercial Legal | Healthcare Regulatory
[redacted]

From:	Carolyn E. Coffey
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] DCWP Debt Collection Rules Comments
Date:	Wednesday, June 11, 2025 12:10:09 AM
Attachments:	MFJ DCWP Debt Collection Comments 2025.pdf

Please see the attached, thank you.

Carolyn E. Coffey
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Director of Litigation for Economic Justice
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Via email to: Rulecomments@dcwp.nyc.gov

June 10. 2025

Re: Proposed Further Changes to Revised Amendments to New York City Department of Consumer and Worker Protection Rules Relating to Debt Collectors

To Whom It May Concern:

Mobilization for Justice (MFJ) appreciates the opportunity to comment again on the Department of Consumer and Worker Protection's (DCWP) revised proposed amendments to its debt collection rules. The proposed amendments will help curb debt collection abuses by third-party debt collectors, and will address some of the gaps left by the Consumer Financial Protection Bureau's debt collection rule, Regulation F.

MFJ's mission is to achieve justice for all. MFJ prioritizes the needs of people who are low-income, disenfranchised, or have disabilities as they struggle to overcome the effects of social injustice and systemic racism. We provide the highest-quality free, direct civil legal assistance, conduct community education and build partnerships, engage in policy advocacy, and bring impact litigation. We assist more than 14,000 New Yorkers each year, benefitting over 24,000. MFJ's Consumer Rights Project regularly provides legal advice and assistance to low-income New Yorkers facing debt collection. Abusive debt collection is a pressing racial justice problem and the country's deep racial wealth gap and the lack of financial resources within communities of color--which are lasting consequences of slavery, segregation, and redlining—disadvantage Black and Brown New Yorkers and make them more vulnerable to economic setbacks. As a result, communities of color are disproportionately targeted for predatory financial products and services and are thus disproportionately impacted by resulting debt collection efforts.

No inference should be drawn from the limited number of comments submitted from consumers and consumer advocates: the proposed rules are lengthy, detailed, and difficult to parse for the average consumer, and many consumer law practitioners at legal services organizations lack the necessary resources to be able to analyze or submit comment on these proposed rules. With this in mind, MFJ endorses the more detailed comments from the National Consumer Law Center.

We support the Rules' clarification that the rules apply to original creditors collecting on their own debts. We also support the clarification in the disclosure that suit on a time-barred debt is illegal. However, we recommend deleting "You have a right to know that" and saying simply: "This debt expired." Furthermore, the phrase "A court will not enforce collection" is inaccurate and misleading because courts can and do enter judgments against consumers on a time-barred debts. We recommend rewriting the beginning of this disclosure to say

"This debt expired. It is illegal for you to be sued on this debt. IF YOU ARE SUED ILLEGALLY . . ."

Upon promulgation, we also urge DCWP to publicize its complaint procedures so that consumers may report debt collectors that do not comply with these rules, and so that DCWP can take swift enforcement measures against any debt collectors that violate the rules. If you have any questions, please feel free to contact me. Thank you.

Sincerely,
Carolyn E. Coffey
Director of Litigation for Economic Justice
212-417-3701 | ccoffey@mfjlegal.org

From:	Tamar Yudenfreund
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Encore Capital Group"s Comments on Proposed Debt Collection Rules
Date:	Thursday, June 5, 2025 12:47:55 PM
Attachments:	image001.png Encore NYC Comments June 2025_final.pdf

You don't often get email from tamar.yudenfreund@encorecapital.com. Learn why this is important

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Please find attached written comments submitted by Encore Capital Group to the DCWP on its proposed debt collection rule amendments.

Thank you,

Tamar Yudenfreund

Midland Credit Management™
an encore capital group company

Tamar Yudenfreund | Sr. Director, Public Policy

350 Camino de la Reina, Suite 100
San Diego, CA 92108
[redacted]

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June 5, 2025

Attn: New York City Department of Consumer and Worker Protection

Sent via email to **Rulecomments@dcwp.nyc.gov**

Re: Comments on Proposed Rule Amendments to Section 2-193 of Subchapter S of Chapter 2 of Title 6 of the Rules of the City of New York

To Whom It May Concern:

On behalf of Encore Capital Group, Inc., and its wholly-owned subsidiaries (collectively, "Encore"), we are submitting this comment letter to the Department of Consumer and Worker Protection's ("DCWP") proposed amendments to its rules relating to debt collectors. We appreciate the DCWP's proposed amendments, but we still have significant remaining concerns with the proposed rules that we outline below.

The Communication Caps Are Too Restrictive and Give a Preferential Standard to Original Creditors and Third-Party Collectors That Should Be Extended to Debt Buyers

If consumers are to successfully resolve their debt obligations and regain financial freedom, they must be able to effectively communicate with debt collectors. Debt collectors reach out to consumers for specific reasons, all aimed at supporting the resolution of debt obligations. The content and purpose of debt collection communications – whether via phone calls, letters, emails or texts – is to:

- Inform consumers of their debt obligations;
- Provide important account information (*e.g.*, the creditor name, charge-off date, account balance, and statute of limitations period, along with disclosures if the limitations period has expired);
- Offer and confirm payment plans; and
- Negotiate settlements

The proposed rules create undue constraints on communications and will hamper the ability of consumers and collectors to connect. The proposed restrictions are substantially more limiting than the federal standard (the Consumer Financial Protection Bureau's Regulation F[1]), which allow for seven phone calls in a seven-day period, and do not count email, text messages or letters in the communication cap. The DCWP's proposed communication caps contrasts with Regulation F in several critical ways:

[1] 12 CFR Part 1006.

	DCWP Proposal	**CFPB's Regulation F**
Number of communications or <u>attempted</u> communications allowed	3 per week	7 per week
Are communications caps considered per consumer or per account?	Per consumer for debt buyers Per account for original creditors and third-party collectors collecting for non-affiliated creditors	Per account
What methods of communication do the communication caps apply to?	Phone calls, texts and e-mails	Phone calls only

We understand that in proposing its communication cap standards, the DCWP is attempting to protect consumers from excessive communications that can feel harassing or overwhelming. We support this goal and submit that the existing call caps in place under Reg F and New York City law[2] already do prevent harassment. New York City law currently allows for two communications per week – with no stated cap on ***attempted*** communications; this is a significantly greater allowance than three ***attempted*** communications that the DCWP is proposing. Regulation F's standard of seven ***attempted or actual*** communications also allows for substantially more communication attempts than the DCWP's proposal. In addition to the call caps that exist, under the Fair Debt Collection Practices Act (FDCPA) a consumer has the right to request that a debt collector cease communications.[3] When a consumer tells us, either

[2] Current New York City law imposes strict limits on when and how debt collectors can communicate with individuals. Debt collectors may not contact debtors before 8:00 AM or after 9:00 PM unless given explicit consent. They are also prohibited from calling more than twice within a seven-day period about the same debt. (6 RCNY, Chapter 5, Subchapter A, Part 6, § 5-76.)

[3] 15 U.S. Code § 1692c(c).

verbally or in writing, that we should stop calling or outright communicating with them, we do so – as that is already the law.

Ultimately, the DCWP's proposed communication caps will impede consumers and debt collectors from effectively communicating. With such strict caps as those proposed, debt collectors will have a very difficult time reaching thousands of New York City consumers with delinquent debt. The unintended consequences of this well-intentioned policy will include lost opportunities to resolve debt, continued negative credit reporting, accrued interest charges, and increased litigation against consumers.

Moreover, in its latest proposed language, the DCWP made changes to the language which creates an entirely separate standard for original creditors. For example, the proposed communication caps rule calculates excessive frequency ***per account*** when the debt collector is an original creditor or third-party collector, but ***per consumer*** for debt buyers. This means that if a consumer has three delinquent accounts with an original creditor – or has three accounts placed with a third-party collector – those parties can contact the consumer six times per week regarding the accounts. This is sensible, as each account was presumably opened at a different time, charged off at a different time, has a different balance, different terms and conditions, and different surrounding circumstances. If, however, the consumer has three accounts with a debt buyer, the debt buyer is limited to just ***two communication attempts per week total for the three accounts***. This means that the rules are effectively prohibiting the debt buyer from contacting one of the accounts altogether – a drastic restriction without any justification. This is not just a hypothetical concern, as debt buyers often collect on multiple accounts for the same consumer that were originated by non-affiliated creditors. Aside from the blatantly inconsistent and unfair standard, the rule could increase consumer confusion – including confusion on which account is being discussed, what the balance is, and when the statute of limitations will expire.

With these concerns in focus, we urge the DCWP to amend Section 5-77(b)(1)(iii)(C) as follows:

> (C) Where a debt collector is an original creditor<u>, debt buyer or third party collection agency</u> attempting to collect ~~in its own name~~ on multiple debts for the same consumer, excessive frequency shall be calculated separately for each distinct account belonging to the consumer.

This language simply extends the commonsense account-level distinction in the definition for calculating excessive frequency from original creditors to the third-party collection agencies and debt buyers that collect on and purchase the very same types of consumer debt.

We also ask that the DCWP's communication caps stay consistent with the existing New York City standard of two communications (*i.e.*, actual connects rather than ***attempted*** communications) per week, or the federal standard of permitting up to seven communications or attempted communications per seven-day period.

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We Urge the DCWP To Eliminate the Barrage of Repeated Monthly Time-Barred Debt Disclosures

The DCWP's proposal would require that, in addition to providing the time-barred debt disclosure on every phone communication, a written disclosure must also be sent to the consumer within 5 days after each oral communication, unless the debt collector mailed such time-barred debt disclosure notice within 30 days. Contrary to the DCWP's policy of attempting to limit communications with consumers, this rule would result in a barrage of repetitive letters.

We believe it is excessive to send consumers a barrage of written notices saying the same thing – either within 5 days after each verbal communication or as much as every 30 days – for debt past the statute of limitations. A consumer could easily end up receiving 20 letters per year in the mail on just one account, a literal barrage of what will likely be perceived as junk mail when one written notice on the time-barred debt disclosure would suffice.

Moreover, the written disclosures to be sent within 5 days of every oral communication, or within 30-day intervals, would be ***in addition*** to the verbal disclosure on time-barred debt the debt collector would convey ***in every single communication***. Hearing a disclosure by phone, at the time of a conversation with a collector, would be more informative to most consumers than receiving a piece of mail that they may not understand without speaking with a collection agent. A consumer receiving 12 letters a year with the same disclosure from a debt collector is less likely to pay attention to other materials the debt collector is sending, including account statements, payment offer letters, and other required disclosures (*e.g.*, validation notices and notices required under the Gramm-Leach-Bliley Act). Moreover, such redundant overcommunication can easily result in the consumer feeling overwhelmed or even harassed. It is common sense that sending consumers the same letter, month after month, is unlikely to effectively convey the intended message, and will instead increase the likelihood of potential consumer confusion and harm.

The sending of so many written letters per year would also create significant environmental waste. The state encourages practices that reduce overall waste, such as promoting electronic communication and recycle programs, and we urge the DCWP to consider this.[4] Just for our company alone, under the proposed standard our company would be sending hundreds of thousands of letters each month with the same redundant disclosure that had already been provided to the consumer (likely multiple times), both in writing and verbally.

Given the senselessness of so many repeat letters from a consumer benefit perspective, coupled with the environmental burden, we urge the DCWP to require, in addition to the verbal disclosures in every telephone conversation, that a standalone disclosure letter on time-barred debt be sent only after the initial verbal communication. To be sure, we would support requiring that disclosure language to be

---

[4] *See* New York State Department of Environmental Conservation's Solid Waste Guidance, located at https://dec.ny.gov/regulatory/regulations/solid-waste-guidance

included in every written communication sent in an attempt to collect the debt – just not needlessly sending the disclosure for disclosure's sake.[5]

Accordingly, we urge the DCWP to amend Section 5-77(i)(4) as follows:

> (4) *Subsequent Communications*. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of time-barred debt exclusively by telephone or by other means of oral or electronic communication. During any oral communications with the consumer, the time-barred disclosure must be given to the consumer to reasonably inform the consumer of the expired debt, in a language the consumer understands, before the debt collector conducts any collection activity including discussing the amount of the debt. After mailing the notice of time-barred debt disclosure required in paragraph (2) of this subdivision, the debt collector must include ~~redeliver~~ such time-barred debt disclosure to the consumer by U.S. mail or other delivery service in each subsequent written communication sent to the consumer attempting to collect the debt, and in written confirmations to consumers of a debt payment schedule or other agreement to settle the debt ~~within 5 days after each oral communication with the consumer unless the debt collector has already mailed such time-barred debt disclosure notice within 30 days~~. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions. A debt collector may not enter into a settlement agreement or receive payment on time-barred debt account from a New York City consumer, if the debt collector has not satisfied paragraphs (2), (3) and (4) of this subdivision.

The DCWP Should Clarify Its Prior Commitment to Allow Debt Buyers to Use the Word "May" Instead of "Will" in Their Credit Reporting Disclosures

The DCWP previously advised that it would modify its credit reporting disclosure language from "will" to "may," given the concerns raised that using the word "will" would mislead consumers. In its

[5] This would include requiring the time-barred debt disclosure language in written confirmations to consumers of a debt payment schedule or other agreement to settle the debt, which is already required to be sent within five business days of agreeing to a debt payment schedule or other agreement to settle a debt. N.Y. Comp. Codes R. & Regs. tit. 23, § 1.5.

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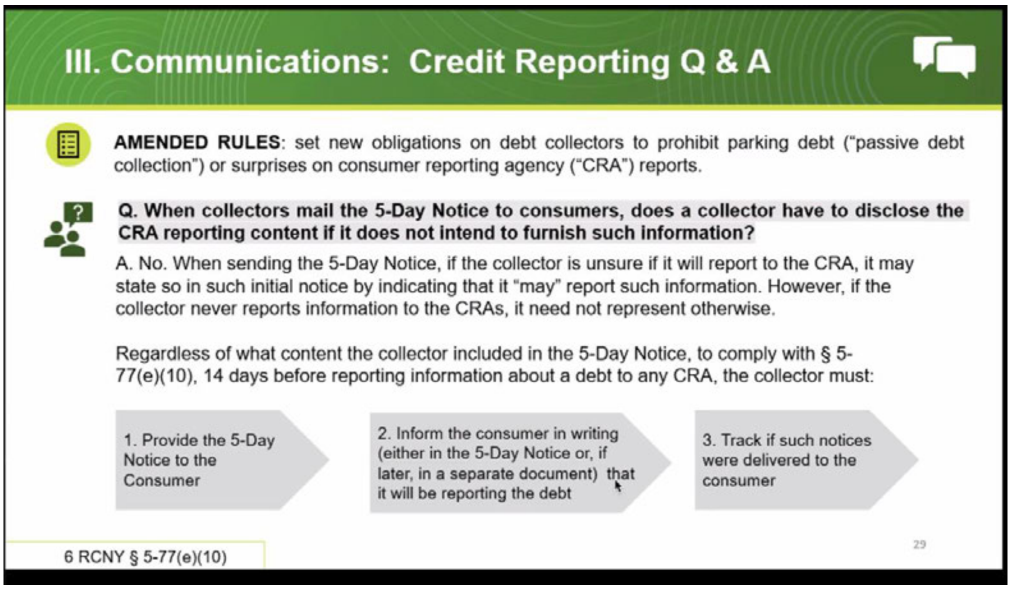
webinar on November 7, 2024, the DCWP stated that when a collector does not intend to credit report, it may state in its initial 5-day notice that it "may" report such information. Below is a screen shot from the DCWP's webinar presentation:



However, the proposed rule states that the disclosure must state that "the information about the debt ***will*** be reported to a consumer reporting agency…" (emphasis added). What the DCWP will require is now unclear and creates the concern that if a collector does not ultimately credit report an account, telling a consumer that it "will" credit report could be misleading. In some cases, debt collectors may decide to credit report all accounts to comply with the "will" language, even if the account otherwise would not have been credit reported.

Due to the confusion caused by using language that an account "will" be credit reported, even if a collector does not intend or wish to credit report, there has been a host of litigation against the collections industry in connection with using disclosure language that an account "may" or "will" be credit reported.[6] To avoid a barrage class action lawsuits against collections companies raising this issue, we ask that companies have the flexibility to write that the account "may" be credit reporting, rather than "will" be credit reporting.

[6] *See, e.g., Sabel v. Halsted Fin. Servs*., LLC, 2020 WL 6274986 (S.D.N.Y. 2020); *Echols v. Congress Collection*, 2021 WL 3510934 (E.D. Mich. 2021); *Sandoval v. Midland Funding*, 2024 WL 3050737 (N.J. Super. Ct. 2024), Pantoja v. PRA, 852 F.3d 679 (7th Cir. 2017).

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We urge the DCWP to update its rule to reflect what it previously said, by changing the language in section 6 RCNY Chapter 5 A § 5-77 (e)(10) as follows:

> …..that states, clearly and conspicuously, that the information about the debt ~~will~~ may be reported to a consumer reporting agency…

This change from "will" to "may" will ensure that the disclosure language is accurate and will prevent lawsuits against debt collection companies on the grounds that the disclosure language is allegedly misleading.

The DCWP's Updated Proposed Restrictions on Contacting Consumers at Their Place of Employment Create an Extreme Barrier, for Both Consumers and Collectors, to Connect

In its updated draft proposed rules, the DCWP made changes to the restrictions on communicating with consumers at their place of employment that would create extreme difficulty for consumers and debt collectors to speak at a convenient time for the consumer. In its prior draft of the proposed regulation, and its FAQs, the DCWP indicated that

> …debt collectors are not expected to 'know' if a consumer is working, where the consumer works (from home or an office) or which phone numbers pertain to work cells versus personal cells. But, if and when it is disclosed or made clear that a contact is an employer-provided contact, then, debt collectors do have affirmative obligations to obtain consent from the consumer to use that direct number or email address at a place of employment. For example, if a consumer informs the debt collector that they called the consumer on their work phone, the collector must take immediate steps to obtain the required consent.[7]

However, in its latest draft, the DCWP appears to have moved away from language restricting communications to a consumer's place of employment – which would be evident through a work phone number or work email address. Instead, the DCWP has proposed a new standard tied to a debt collector's knowledge about a consumer's "work hours." That is, the DCWP now states that a debt collector may not communicate with a consumer at "a time the debt collector knows or should know is during the consumer's work hours," unless the consumer has provided prior written revocable consent.

This new standard is problematic for several reasons. First, debt collectors cannot typically know a consumer's work hours. Should we assume that most consumers work from 9 am to 5 pm and that we can't contact them during that eight-hour block? If we have reason to understand that a consumer is a

[7] FAQs on the DCWP Debt Collection Rulemaking, located at *https://www.nyc.gov/site/dca/businesses/debt-collection-rules-faq.page*.

teacher, does that change the work hours from 8 am to 4 pm? Such a standard is impossible to comply with, given that there is often no way for a debt collector to know a consumer's working hours.

Next, consumers often will ask to be called during a lunch break during a workday, and asking a consumer to send in written consent to make a call during a lunch break puts an unnecessary burden on the consumer and discourages effective communications from taking place.

Under Regulation F's time and place restrictions, if a consumer states that they do not want to be contacted at work, we honor the request. We are careful to screen for phone numbers and email addresses that are associated with a consumer's place of work. What collectors often do is quarantine likely work phone numbers and work email addresses, so that no outreach is made to a consumer via a suspected work phone or email address. It would be extremely difficult to surmise a consumer's daily work hours, but we can reasonably exclude from calling a work number or emailing a work email address. A standard that restricts contacting employees at a work number or work email address that a debt collector knows or should know is a work number or work email is far more workable, and convenient to the consumer, than the proposed language.

To that end, we urge the DCWP to revert to its prior draft language and amend Section 5-77(b)(6) as follows:

> (6) Communicate or attempt to communicate with a consumer at the consumer's place of employment, including by sending an electronic message to an email address or a text message or call to a phone number, that the debt collector knows or should know is provided to the consumer by the consumer's employer. Notwithstanding the foregoing, such communication is permissible where the consumer provided consent to the debt collector to use a direct number at the consumer's place of employment as the consumer's preferred method of contact for the debt and the consumer has not otherwise revoked such consent and such communication does not violate any other provision of local, state or federal law.

<u>A New Effective Date is Needed to Ensure the Industry Has Sufficient Time to Comply</u>

The DCWP has reopened its debt collection rulemaking, but has failed to update the effective date. The stated effective date of October 1, 2025 was initially applicable to presumably final rules issued in August 2024. However, with the DCWP reopening the rulemaking and issuing updated proposed rules, it is now unlikely that final rules will be reissued until August 2025 – a full year after the first version of final rules had been issued. Commensurate with the one-year deferral of final rules, from August 2024 to August 2025, we ask that the DCWP likewise delay the effective date by one year, from October 1, 2025 to October 1, 2026.

The comment period closes on June 10, 2025, and final rules will likely not be issued until August 2025 (or July 2025 at the very earliest). By maintaining the original October 1, 2025 effective date that would apply to final rules issued in August 2025, companies would only have approximately eight weeks of time to review and implement the final rules, once they are issued. Eight weeks is inadequate given the breadth and complexity of the rules, which touch on nearly every aspect of how companies communicate and interact with consumers. In its latest proposal, issued in April 2025, the DCWP has proposed significant changes to a variety of sections, including communication caps, lettering and disclosure requirements, and verification requirements. As such, to ensure that companies can adequately digest and implement the rules to comply with the multitude of new requirements, it is imperative that the effective date is extended by a year, mirroring the DCWP's extension of one year to issue updated final rules.

* * *

Thank you for your work on this rulemaking and the opportunity to comment to highlight our concerns and suggestions. Should you have questions or request additional information, please don't hesitate to contact me at tamar.yudenfreund@encorecapital.com.

Sincerely,

Tamar Yudenfreund

Tamar Yudenfreund
Senior Director, Public Policy

From:	Ansorge, Jamie L.
To:	rulecomments (DCWP); Radecker, Hali (DCWP); Revina, Reina (DCWP)
Cc:	Grossman, Jonathan
Subject:	[EXTERNAL] Estate Debt Coalition Testimony - 6/10/25 Debt Collection Proposed Rules
Date:	Tuesday, June 10, 2025 3:22:25 PM
Attachments:	image001.png Estate Debt Collection NYC Testimony Part 2.docx

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Good Afternoon,

I'm writing on behalf of the Estate Debt Coalition to submit the attached written testimony related to the hearing on debt collection rules that took place earlier today.

Please confirm receipt.

Thank you very much!

Jamie Ansorge
Senior Principal
3 WTC, 175 Greenwich Street 55th Floor | New York, NY 10007
[redacted]
copublicstrategies.com
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Testimony of Jonathan Grossman
Estate Debt Coalition (EDC)

before the

New York City Department of Consumer and Worker Protection
RE: Rules relating to debt collectors

June 10, 2025

Good afternoon, representatives of the Department of Consumer and Worker Protection. My name is Jonathan Grossman and I am here today representing the Estate Debt Coalition ("EDC"), which is comprised of a number of the largest companies that focus on representing creditors in the estate resolution process. We appreciate the opportunity to testify on DCWP's proposed amendments to its rules related to debt collectors (the "Proposed Rules").

When a New York City resident dies, his or her assets become part of an estate. In most circumstances, New York law requires that the debts of the decedent be paid out of the assets of the estate prior to distributions being made to beneficiaries. As a result, whomever is responsible for handling the estate has the obligation to identify and pay the debts of the estate. When the decedent has substantial assets, or owns real property, estates are usually resolved through a formal probate process in which a court oversees and approves the distribution of assets to both creditors and beneficiaries. In such cases, EDC members submit claims through the formal probate process.

The majority of estates, however, are not formally resolved through probate courts, but rather informally by family members, and this is particularly true in jurisdictions like New York City where most people rent their homes. In such instances, EDC members play an important role in working with family members to resolve the estate's obligation, thereby assisting family members in their administration of the estate. Indeed, these communications are often welcomed by family members because they cannot close out the estate and distribute net assets to beneficiaries until all debts are identified and resolved.

As a result, this unique form of "debt collection" raises very different regulatory issues than most other debt collection. And unfortunately, the plain language of the Fair Debt Collection Practices Act ("FDCPA"), did not squarely address many of these issues.

In 2011, the Federal Trade Commission ("FTC") sought to address some of these issues in its Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts ("FTC Statement".[1] The FTC Statement noted that Section 805(b) of the FDCPA generally prohibits disclosure of a consumer's debt to third parties and that the definition of "consumer" for these purposes includes the consumer's "executor" and "administrator." The FTC Statement also noted that the FDCPA does not define those terms and does not address the situations in which jurisdictions do not use those terms or in which family members seek to resolve the estate outside of the formal probate process. The FTC addressed this issue by taking the position that it would not enforce against estate debt collectors who communicated with the person "who is authorized to pay debts from the estate of the deceased."

In the middle of the FTC's process of publishing it's Statement, Congress passed the Dodd-Frank Act, which authorized the Consumer Financial Protection Bureau ("CFPB") to promulgate debt collection rules. In 2020, it revised Regulation F, which implements the FDCPA. Regulation F addressed a number of issues related to estate debt and was largely consistent with the FTC Statement.

> The CFPB defined, as used in the FDCPA, "[t]he terms executor or administrator [to] include the personal representative of the consumer's estate. A personal representative is any person who is authorized to act on behalf of the deceased consumer's estate. Persons with such authority may include personal representatives under the informal probate and summary administration procedures of many States, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the deceased consumer's financial assets or other assets of monetary value extrajudicially."

With this background as context, EDC is concerned that the Proposed Rules in their current form would result in unintended consequences that would actually be counter to the interests of families seeking to resolve the estates of their loved ones. We are therefore proposing one change that is consistent with the positions of the FTC and CFPB, and, we believe, the intent of DCWP.

Specifically, the definition of "Consumer" applicable to § 5-77(b)(1) includes the consumers

[1] See https://www.ftc.gov/news-events/press-releases/2011/07/ftc-issues-final-policy-statement-collecting-debts-deceased for links to the proposed and final FTC Statements and associated documents.

"executor" and "administrator" but, like the FDCPA, does not define those terms or indicate whether individuals performing those functions unofficially are covered. Furthermore, the list of additional parties with whom a debt collector can speak in §5-77(b)(2) does not even include the executor or administrator of an estate, let alone a family member informally performing those functions.

We do not believe that it is the intent of DCWP to prohibit these communications, so we have proposed an amendment to §5-77(b)(2) that would clarify that debt collectors may communicate about a debt with "an executor or administrator of a deceased consumer's estate (or a person who is authorized to act on behalf of such estate)".

Of course, we also believe that such individuals should be afforded the same protections under the law as other debtors, so we have also proposed amending the definition of "consumer" in §5-77(b)(1) to include "a person who is authorized to act on behalf of a deceased consumer's estate".[2]

In closing, I'd like to again thank DCWP for considering our testimony today and also for working productively with all stakeholders on the Proposed Rules. I would be glad to respond to any questions that you may have.

CONTACT:
Jonathan Grossman
JGrossman@cozen.com

[2] We also note that, under both the current and proposed rule, the definition of "consumer" that includes the parent of a minor, guardian, executor, administrator, and spouse is limited to Paragraph 1 of § 5-77(b). The crucial issue for EDC members is the ability to communicate with the family members of the deceased who are handling the estate, so we have marked up Paragraph 2 accordingly. As a general point, however, we would also be in favor of extending the consumer protections set forth in Paragraphs 2-9 to apply to all of these other individuals.

PROPOSED MARKUP [EDC proposed changes highlighted in yellow]

§ 5-77. Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

…

(b) ***Communication in connection with debt collection***. A debt collector, in connection with the collection of a debt, [shall] must not:

(1) [After institution of debt collection procedures, without] Without the prior written consent of the New York City consumer given directly to the debt collector [after the institution of debt collection procedures], or without permission of a court of competent jurisdiction, [communicate with the consumer in connection with the collection of any debt;] engage in any of the following conduct:

…

For the purpose of this paragraph [(b)(1) of this section], the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, (or a person who is authorized to act on behalf of a deceased consumer's estate) or spouse (unless the debt collector knows or should know that the consumer is legally separated from or no longer living with their spouse).

(2) Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, the consumer's attorney, an executor or administrator of a deceased consumer's estate (or the person who is authorized to act on behalf of such estate), a consumer reporting agency, the creditor, the attorney of the creditor, a debt collector to whom the debt has been assigned for collection or the attorney of that debt collector without the prior written consent of the consumer or their attorney given directly to the debt collector, or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy.

From:	Angelena Bradfield
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] FTA Comment Letter on NYC DCWP Proposed Rule
Date:	Tuesday, June 10, 2025 11:44:00 AM
Attachments:	FTA Comment Letter re NYC DCWP Debt Collection Proposal.pdf

Hello:

Thank you for the opportunity to testify today. Please find attached the Financial Technology Association's comments on NYC DCWP's proposal to amend rules relating to debt collectors.

We appreciate your consideration of our comments as well as our hearing testimony and would be happy to discuss any of the items raised further.

Respectfully,
Angelena

Angelena Bradfield
Head of Policy
Financial Technology Association

June 10, 2025

New York City Department of Consumer
and Worker Protection
42 Broadway No. 5
New York, NY 10004

Re: Proposed Amendments to the Rules Relating to Debt Collectors

The Financial Technology Association (FTA) appreciates the opportunity to respond to the New York City Department of Consumer and Worker Protection's proposal to amend rules relating to debt collectors. FTA is a network of fintech leaders shaping the future of finance. We champion the power of technology-driven financial services to catalyze innovation and advocate for modernized policies and regulations that reflect this digital transformation. Our members include original creditors, loan servicers, and purchasers of non-defaulted loans as well as nonlenders that could be impacted by this proposed rule. These are parties who generally have a relationship with consumers from inception of an account, or shortly thereafter.

Most state and federal debt collection law is aimed at third-party debt collection agencies collecting what is commonly referred to as "defaulted" or "charged-off" debt. In many cases, defaulted debt buyers are also classified as collection agencies under these laws. The vast majority of these laws exempt creditors and anyone who takes placement or assignment of an account prior to default. In the consumer credit industry, we call these "first parties."

At the federal level, the Fair Debt Collection Practices Act (FDCPA) recognizes the first party versus third party distinction, fully exempting first parties. New York State recognizes this distinction in 23 NYCRR Part 1, also exempting first parties. However, this proposed rule does not recognize such a distinction and inappropriately applies the definition of debt collector in an unworkable and overly broad manner. Furthermore, it can be read to cover nonlenders, including product offerings that do not involve formal debt obligations, such as overdraft, as well as traditional recovery practices such as passive recovery from inbound channels. FTA asks the Department to harmonize its debt collection rule with the FDCPA and New York State regulations by fully exempting first parties from these onerous requirements.

Even if the Department believes that creditors and loan servicers should be subject to some aspects of the rule, the Department should recognize that certain procedural rules designed for third-party debt collection are not appropriate to first parties and the servicing phase as well as nonlenders. In particular, debt validation notices, cease-and-desist notices, mini-Miranda warnings, and limited-content messages make little sense as a public policy matter for first parties and the servicing phase. In addition, customers using banking products and services, such as overdraft, through an online platform are already protected by the federal Electronic Fund Transfer Act and its implementing regulations.

While we appreciate the Department making certain creditor requirements hinge on whether "debt collection procedures" have commenced, part (4) of the definition of "debt collection procedures" is flawed. First parties traditionally include anyone who takes placement or assignment of a non-defaulted debt. Many consumer credit products are serviced by a third party from inception. Many consumer credit products are originated with the intent of selling them to investors. Third-party servicing and loan sales are routine matters that should not trigger onerous requirements designed for third-party debt collection. Part (4) would even be triggered by a purely internal transfer within a company, another highly routine matter that does not warrant enhanced consumer protections.

FTA urges the Department to either remove part (4) or narrow it to placing debt with a third-party collection agency. We appreciate your consideration of our comments and would be happy to work with you as you revise New York City's debt collection rules.

Sincerely,

Penny Lee

Penny Lee
President and Chief Executive Officer
Financial Technology Association

From:	McCall, Christopher
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] Further Amendment of Rules Relating to Debt Collectors (Ref. No. 2025 RG 010)
Date:	Tuesday, June 10, 2025 2:58:28 PM
Attachments:	NYAG comment letter (FINAL).pdf

Dear Sir or Madam:

Please see the attached comment letter submitted on behalf of the New York State Office of the Attorney General in connection with the above-referenced rulemaking.

Respectfully submitted,

Christopher L. McCall
Assistant Attorney General
Consumer Frauds & Protection Bureau
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005
[redacted]

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

June 10, 2025

VIA ELECTRONIC MAIL

New York City Department of Consumer and Worker Protection
42 Broadway
New York, New York 10004
rulecomments@dcwp.nyc.gov

Re: Further Amendment of Rules Relating to Debt Collectors (Ref. No. 2025 RG 010)

Dear Sir or Madam:

On behalf of the New York State Office of the Attorney General ("NYAG"), I write to provide comments on the March 25, 2025 proposed amendments ("Proposed Amendments") to the debt collection provisions of the New York City Consumer Protection Law, N.Y.C. Rules & Regulations, tit. 6, §§ 5-77 *et seq.* ("CPL").[1] Complaints about debt collection are consistently among the top categories of consumer complaints to the NYAG. While the New York City Department of Consumer and Worker Protection ("DCWP") has direct enforcement authority of the CPL,[2] the NYAG enforces a number of federal and state laws regarding debt collection and devotes significant resources to enforcement actions against unscrupulous debt collectors. We believe the Proposed Amendments will broadly benefit consumers, and write to provide limited comments on two aspects of the Proposed Amendments that will be particularly beneficial to consumers.

The Proposed Amendments Make Clear that the CPL Applies to Original Creditors Who Are Engaging in Debt Collection Activity

Most significantly, the Proposed Amendments make clear that the CPL's debt collection provisions continue to apply to creditors, and not just third party debt collectors, under certain

[1] *See* Further Amendment of Rules Relating to Debt Collectors (Ref. No. 2025 RG 010), *available at* https://rules.cityofnewyork.us/wp-content/uploads/2025/04/DCWP-NOH-Proposed-Further-Amendment-of-Rules-Relating-to-Debt-Collectors.pdf. The Proposed Amendments would take effect on October 1, 2025.

[2] *See* N.Y.C. Admin. Code, tit. 20, § 20-703(e).

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circumstances.[3] Specifically, the Proposed Amendments apply the CPL to original creditors "after the initiation of 'debt collection procedures.'"[4] The Proposed Amendments define "debt collection procedures" broadly as "any attempt by any person to collect a debt after" four enumerated circumstances, including, *inter alia*, the original creditor has demanded the full balance due and where "the original creditor has transferred the debt to another person to collect, including but not limited to charging off the debt, selling the debt, or placing the debt with a debt collection agency, an attorney or law firm, or with another department or unit for collection."[5] The Proposed Amendments further clarify their applicability to original creditors in the definition of "debt collector," which is defined broadly to include, *inter alia*, "any person" who, after the initiation of debt collection procedures, attempts to collect a debt owed to the original creditor.[6]

The NYAG believes the common-sense protections of the CPL should apply whether an entity attempting to collect a debt is the consumer's creditor or a third-party debt collector. No consumer, for example, should be bullied into paying a debt by a business using profane or obscene language, regardless of the precise relationship between the consumer and the entity collecting the debt. Moreover, the fact that the Proposed Amendments would only apply to original creditors when they are engaging in traditional debt collection conduct – *i.e.,* "after the initiation of debt collection procedures" – addresses the concerns expressed by the financial services industry that the Proposed Amendments would impose undue burdens on day-to-day communications with consumers unrelated to debt collection.

The Proposed Amendments Contain Reasonable Restrictions on Contacting Consumers

We similarly believe that the Proposed Amendments strike the appropriate balance regarding the frequency with which debt collectors can contact consumers.

The Proposed Amendments continue to prohibit debt collectors from contacting consumers with "excessive frequency," which is defined to be more than three times in seven days.[7] The Proposed Amendments provide that when an original creditor is collecting multiple debts for the same consumer, "excessive frequency shall be calculated separately for each distinct account belonging to the consumer."[8] This is important because, according to research conducted by the federal Consumer Financial Protection Bureau, "almost 75 percent of consumers with at least one debt in collection have multiple debts in collection."[9] The Proposed Amendments would likely result in fewer contacts for consumers with multiple debts.

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[3] *See City of New York v. Berkeley Educ. Servs. of New York, Inc.*, 179 A.D.3d 538, 539 (1st Dep't 2020) (noting that the CPL is not limited to third-party debt collectors but also to creditors collecting their own debts).

[4] *See* Proposed Amendments at p. 3.

[5] *See* Proposed Amendments at pp. 7-8.

[6] *See* Proposed Amendments at p. 8.

[7] Proposed Amendments at p. 11.

[8] Proposed Amendments at p. 12.

[9] C.F.P.B., *Debt Collection Practices (Regulation F)*, 84 Fed. Reg. 23,274, 23,312 & n.300; *see also* C.F.P.B.*, Consumer Experiences with Debt Collection*, Jan. 2017, at 13, table 1, *available at*

The Proposed Amendments address industry concerns by excluding communications between an original creditor and the consumer "in the ordinary course of the creditor's business unrelated to debt collection practices."[10] Thus the Proposed Amendments would be no bar to creditors communicating with their consumers for reasons other than debt collection.

* * * * *

The NYAG appreciates the DCWP's commitment to protecting New Yorkers from unscrupulous and unlawful debt collectors. The NYAG believes the Proposed Amendments will benefit consumers, and we appreciate the opportunity to provide these limited comments.

Respectfully submitted,

Letitia James

LETITIA JAMES
New York Attorney General

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https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf (noting that "57 percent of consumers with at least one debt in collection reported having between two and four debts in collection").

[10] Proposed Amendments at p. 13.

From:	Elora Rayhan
To:	rulecomments (DCWP)
Cc:	Danielle Arlowe; Christian O'Connor
Subject:	[EXTERNAL] Fw: AFSA Testimony Registration for 6/10 Hearing & Comment Letter
Date:	Tuesday, June 10, 2025 6:08:45 AM
Attachments:	Outlook-qv2pz1y3.png Outlook-r2igmrd5.png AFSA comment letter - NYC DCWP Debt Collector Rules 6.10.2025.pdf

DCWP,

Attached is a formal comment letter from the American Financial Services Association (AFSA) in regard to the NYC DCWP debt collector rules. Thank you for your time and consideration of our comments.

I would also like to kindly follow up on my previous email. Could you please confirm that you have Danielle Arlowe registered to orally testify at today's hearing? Will it be possible for her to be first in line to speak? Thank you so much.

Best,
Elora

AFSA
AMERICAN FINANCIAL SERVICES ASSOCIATION

Elora Rayhan
State Government Affairs Analyst
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1750 H St. NW #650
Washington, DC 20006

June 10, 2025

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004
Via email: rulecomments@dcwp.nyc.gov

Re: Proposed Amendment to Rules Relating to Debt Collectors

To Whom It May Concern:

On behalf of the American Financial Services Association (AFSA),[1] thank you for the opportunity to express our continued concerns with the Department of Consumer and Worker Protection's ("DCWP" or "the Department") updated proposed amendments to its rules relating to debt collectors.

We share DCWP's goal of promoting fair debt collection practices, and we appreciate DCWP's consideration of our previous comments. Nevertheless, we believe additional amendments are necessary to avoid significant unintended consequences for New York individuals and families as well as the financial institutions that serve them.

Though we have multiple concerns about the current state of the proposed amendments, our primary concern relates to their applicability to original creditors. This will drive consumer harm and disrupt the provision of safe affordable credit in New York. Critically, federal and state preemption concerns call into question the rule's viability.

1. Applicability

As we have commented previously, applying the same debt collection rules to creditors, including assignees of motor vehicle retail installment contracts, in the proposed amendments draw distinctions between original creditors and other creditors that yield inconsistent results that the Department may not have intended (e.g., to distinguish original creditors from other creditors

[1] Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, and payment cards. AFSA members include national banks and non-bank state licensed financial institutions. AFSA does not represent payday lenders, title lenders, or credit unions.

servicing performing accounts for purposes of the contact frequency limitations). We respectfully recommend that the final rule treat all "creditors" who either originate or service current credit obligations the same. As we discuss further below, for regulatory purposes, the "creditor" (regardless of whether that party is simply called the "creditor" or the "original creditor") should be understood to mean the person to whom the repayment obligation is currently owed—whether that be the party who initially extended credit and entered into the credit obligation with the consumer (regardless of whether that obligation is a direct loan, a line of credit, or a credit sale obligation—such as a retail installment contract) or parties who are assigned or purchase such a credit obligation before it is in default. Applying the same language to third-party debt collectors will disrupt the beneficial communication between creditors and consumers. This will result in reduced customer service quality and limit creditors' ability to offer tailored financial solutions, potentially forcing creditors to take escalated collection measures (e.g., suing or repossessing) sooner than they otherwise would have, ultimately harming consumers.

1.1 Request for Exemption of Licensed Financial Institutions

We urge the Department to exempt national and state-chartered banks as well as New York-licensed financial institutions, as defined under the Gramm-Leach-Bliley Act. One solution would be to incorporate statutory language that exempts "licensed financial institutions" under existing federal or state supervision:

> *"This rule shall not apply to any person, firm, corporation, or organization that is licensed and regulated under the laws of this state, any other state, or the United States relating to banks, credit unions, trust companies, savings associations, or other licensed financial institutions, or to the affiliates of any of the foregoing."*

This framework provides clarity while preserving regulatory oversight and mitigates the risk of institutions already overseen by federal regulators being subject to duplicative and conflicting standards for New York-licensed financial institutions and already regulated state and national banks.

1.2 Suggested Revisions for Defining "Original Creditor"

As written, the definition of "original creditor" is unclear and does not account for modern credit and servicing structures. The current definition— "any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt"—fails to clarify whether it includes indirect finance companies that acquire contracts shortly after origination under dealer-based auto financing models. These companies are integral to the origination process in the vehicle finance market and frequently play a material role, accounting for a substantial share of sales finance activity (excluding buy-here-pay-here businesses).

The term "extending credit" is undefined and introduces uncertainty in the vehicle finance context. We request the Department adopt the definition of "credit" found in federal Regulation B Section 1002.2(j) to help address this issue.

We recommend clarifying that "original creditor" includes entities that acquire an account after origination and before default, as well as their servicing affiliates. This clarification would align with longstanding federal interpretations and reflect the reality of indirect auto lending. We propose the following revision, modeled after language in the New York Uniform Civil Rules:

> *"Original creditor means the financial institution that owned the consumer credit account at the time the account was charged off, or any affiliate thereof, even if that financial institution did not originate the account. Charged-off consumer debt means a consumer debt that has been removed from an Original Creditor's books as an asset and treated as a loss or expense."*

Alternatively, we suggest the Department incorporate industry-standard language into the definition of original creditor:

> *"Except a person or entity that originated the account or acquired the account before default, including its servicing affiliate, and is collecting the debt for its own account."*

In addition, we recommend the Department incorporate a narrower exemption—modeled after the federal Fair Debt Collection Practices Act (FDCPA) and Regulation F—by excluding from the definition of "debt collector" any entity servicing a debt that was not in default at the time it was acquired. This approach would bring the rule into alignment with federal and state standards and address concerns raised by indirect auto finance companies with affiliated servicers.

If the Department refuses to exempt licensed financial institutions or original creditors, we respectfully request the Department to confirm that the proposed rules do not apply to regulated creditors; consistent use of defined terms and triggers for requirements and conduct limitations throughout the final rule will clarify its scope and application and help companies subject to the rule comply with it. For purposes of AFSA's comments, and consistent with our recommendation above, we refer to "creditors" as original creditors and other creditors who are servicing and collecting debts from a time before charge-off and/or the time when they initiate "debt collection procedures," which should be revised as discussed below. We understand that "creditor" will not refer to entities whose servicing business model involves internal transfers or pre-charge-off activity; a contrary conclusion risks unintended consequences and misclassifies

essential servicing functions as "debt collection procedures." This would expose creditors to compliance obligations even before any delinquency has occurred—obligations that were originally intended to apply to the purchase of defaulted debts for the purposes of collection (i.e., "debt collectors" under the federal Fair Debt Collection Practices Act).

Additionally, indirect finance companies often utilize a separate but affiliated entity to perform a variety of servicing functions, including collections. To avoid unintentionally omitting this structure from the above exception, we recommend an additional revision to the definition of "debt collector," specifically exempting persons collecting debt that was not in default at the time it was obtained, which is present in the FDCPA/Reg. F and state-specific laws. We respectfully request the following clarification of "Debt Collector" within section 5-76:

> *"Debt collector: The term "debt collector" means any person engaged in any business the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person. The term does not include:*
>
> > (6) *any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity concerns a debt that was not in default at the time such person obtained it."*

2. "Debt Collection Procedures"

The proposed definition of "Debt Collection Procedures" is vague and may unintentionally capture routine internal account management practices. For example, the phrase "placing the debt with another department or unit for collection" could unintentionally capture standard intra-organizational servicing activity—such as when different departments simultaneously manage billing, credit reporting, and outbound communications prior to charge-off. This could trigger unnecessary and confusing compliance obligations such as validation notices and opt-out rights, even when no actual collection calls are placed, or collection letters are sent. Additionally, "selling the debt" could capture benign transactions such as portfolio sales, bank mergers, assignments of the debt to affiliates, or assignments into and out of securitization trusts, which are quite common in the marketplace and are not part of the collection process.

Ordinary servicing activity—such as communication between different internal departments related to collections and credit reporting—should not trigger the rules. Applying these provisions to such conduct would cause unnecessary consumer confusion and create compliance

challenges for original creditors, their affiliates, state-licensed finance companies, national banks and banks chartered under the laws of other states.

We recommend removal of Subpart (4) or, in the alternative, that Subpart (4) of the definition be revised to clarify that "Debt Collection Procedures" apply only after or where the debt has been sold or assigned to a distinct, unaffiliated third party after default. For example:

> *"...the creditor has accelerated, charged off, or transferred or sold the debt to a collection agency to collect, or sold to or placed the debt with a debt collection agency, an attorney or law firm; or after relinquishing all servicing rights by placing the debt with a separate, unaffiliated third party or legal entity. Transferring the debt to another excludes a motor vehicle dealer as the original creditor that assigns the retail installment contract to a lender at originations of the contract."*

To further avoid ambiguity, we also recommend clarifying that the definition of "debt" only includes accounts that have been charged off, as this would ensure the rules do not inadvertently apply to pre-charge-off servicing activity conducted by vendors or internal departments.

Additionally, the proposed definition of "Debt Collection Procedures" appears to conflict with the rule's definition of "pre-charge-off period," which is defined as the time before a debt is charged off. Under the current drafting, collection procedures could be considered to begin during this pre-charge-off period—such as when an account is simply transferred internally between departments, which creates ambiguity and frustrates compliance efforts. This overlap risks triggering collection obligations for accounts that are still performing or not yet delinquent, undermining the intent of both definitions.

AFSA strongly recommends that the rules clarify that for creditors, "debt collection procedures" only begin after acceleration or after the debt is charged off, regardless of which department or division is involved.

3. Validation Notice Requirements

AFSA members are concerned that the proposed validation notice requirements are not appropriately scoped for creditors while undertaking ordinary account servicing. The current provisions impose unnecessary burdens, risk confusion for consumers, and cause operational disruption for financial institutions.

At a minimum, and depending on whether the definition of "Debt Collection Procedures" is updated, any Validation of Debt Notice should only be triggered upon acceleration of the debt, and not any earlier.

3.1 Duplication of Existing Federal Regulations

The proposed requirement to send validation notices largely overlaps with obligations already imposed under the Truth in Lending Act (TILA), Fair Credit Reporting Act (FCRA), Fair Credit Billing Act (FCBA), Regulation Z, and the Real Estate Settlement Procedures Act (RESPA). These federal laws, along with supervisory oversight by multiple federal agencies, including, without limitation, the OCC and the FDIC, provide comprehensive frameworks that govern consumer disclosures, dispute resolution, and error correction processes.

AFSA appreciates that the Department has reinserted the exemption to the validation notice requirement for those who are subject to and comply with the dispute provisions of the FCBA. However, we note that closed-end creditors (like sales finance companies and banks making direct closed-end loans) are not excluded from the DCWP's validation notice requirement because they are not subject to the FCBA dispute procedures. This omission results in inconsistent obligations across a creditor's loan portfolio—for example, student loans, personal loans, and closed-end mortgages would be subject to validation requirements, while credit cards, HELOCs and other account types may not be. This inconsistency creates compliance uncertainty and raises operational burdens without consumer benefit.

AFSA recommends expanding the validation notice exemption to include creditors servicing performing debts in general, not just those covered by the FCBA. This change would harmonize the rules with federal law and ensure consistent treatment across product types. At a minimum, we respectfully request that the Department confirm the validation notice requirement is fulfilled by issuing the letter once during the life of the loan. Given the circular nature of a loan's life-cycle, it's possible a customer continuously flows in and out of Debt Collection Procedures.

3.2 Exclusion of All Original Creditors from the Validation Notice Requirement

The purpose of sending a validation letter is twofold: (1) to introduce the consumer to the debt collector; and (2) to make sure the consumer and debt collector have the correct information about the debt so the consumer can raise questions they may have. These purposes do not apply and are unnecessary for entities and creditors collecting their own debt. Regardless of loan product, the creditor would have already satisfied the purposes of this notice by previously communicating with the consumer about the account at account origination or when it was transferred to the creditor shortly after account opening—well before any collection activity begins and prior to the debt becoming delinquent. By doing so, it has already introduced itself to the consumer and provided them with the necessary information about the loan product. Thus, "reintroducing" the creditor to the consumer after the institution of debt collection procedures is duplicative, unnecessary, and potentially confusing to the consumer.

AFSA recommends expanding the validation notice exemption to include creditors servicing performing debts in general, not just those covered by the FCBA. This change would harmonize the rules with federal law and ensure consistent treatment across product types.

3.3 Natural Person Contact Information

Another reason that this requirement would be particularly burdensome for creditors is that the Department has retained the requirement that the Validation Notice include both "the name of the natural person for the consumer to contact" and "the telephone number that is answered by a natural person during all time when a debt collector conducts business with consumer." This creates both serious privacy and security concerns for those named in letters and unnecessary operational burdens on creditors that will lead to worse customer service. Individuals named in debt collection letters will be at an increased risk of harassment and potential physical attack. Debt collection in even the most customer-friendly setting can create understandable anxiety amongst consumers. As we have unfortunately seen recently in the healthcare space, making an employee's name public can leave them exposed to online harassment, or worse.

Implementing this requirement poses considerable challenges for creditors, which typically operate large call centers staffed by specialists who handle incoming calls. Customers are commonly not assigned specific employees for collections, leading to interactions with multiple representatives throughout the process. While creditors are committed to providing exceptional service, it is impractical for any business to include a specific person's name on every communication for direct consumer contact. Even if creditors invested a substantial amount of time and money to be able to offer a natural person's name to the customer, it would be unsustainable and lead to poor customer experience. If multiple customers are calling the same person, this will result in long customer wait times and frustration without any benefit for the customer, when other available agents are fully capable of providing the help that the customer needs. Furthermore, sharing an employee's name and phone number raises privacy and security concerns for creditors and their employees. We recommend that validation notices be required to include only the debt collector's name and the contact number for its Collections department.

Additionally, strict compliance would require disproportionate operational resources. For example, what if the individual named in the letter leaves the company or changes job functions prior to the consumer reaching out; which is incredibly common at large original creditors? Would the sender have to re-send the letter? This would require the sender to have to monitor all validation letters against all employment decisions, which provides no benefit to the consumer.

Similarly, requiring that a covered entity have a phone line that is answered by a natural person would create undue burden for the creditor and no real benefit for the consumer. Consumers would inevitably be faced with long wait times while an agent becomes available to answer a phone call. Modern call answering technology much more efficiently manages call flows so that customers who wish to self-service via the phone can do so, enabling those wishing to speak with an agent to reach one.

While we still believe that all creditors should be exempted from the validation notice requirement entirely, AFSA recommends that the requirement to provide the contract for a natural person in the validation notices be removed, as this is not reflective of how a consumer's relationship with a creditor functions.

At a minimum, we respectfully request that the Department confirm the validation notice requirement is fulfilled by issuing the validation notice once during the life of the loan. Given the circular nature of a loan's life-cycle, it's possible a customer continuously flows in and out of Debt Collection Procedures.

3.4 Non-English Validation Notices and Language Access Services (LAS)

The rules under **§ 5-77(f)(3)** are likely to chill the provision of a non-English communication by original creditors for the consumer's benefit. Creditors may be forced to cease sending debt validation notices in a customer's preferred language because these rules would impose an affirmative obligation on the creditor to, from that point forward, provide full servicing in that language other than English. This will dissuade creditors from offering spontaneous non-English creditor-to-consumer communication, such as by customer service representatives.

We have heard from our members that it is common for a consumer or creditor to *temporarily* engage in non-English communication with each other without the expectation of altering the consumer-to-creditor business relationship that was established in English. Moreover, Subparagraph (iii) creates significant operational barriers for creditors seeking to comply with these rules; such as requiring creditors to maintain extensive libraries of accurately translated non-English statutorily required letters, complaints, call scripts, and other documents.

Critically, **§ 5-77(f)(3)** and its subparagraphs ignore the modern, free translation services employed by millions of consumers to translate any text to their preferred language. AFSA appreciates the perspective of the Department for protecting consumers who prefer to speak in a language other than English, but we believe that these translation services largely solve the ills that the Department seeks to mitigate.

At minimum, AFSA recommends striking Subparagraph (ii) so the non-English validation notice and resulting Language Access Services have a simple, one-trigger mechanism by consumer request. This revision will maintain the rule's intent of consumer protection while streamlining practical compliance. AFSA again urges the Department to revise the rule to exempt original creditors, who provide LAS, to relieve them of the compliance burdens under **§ 5-77(f)(3)**. We further recommend that the Department amend Paragraph **(f)(3)** to use the **§ 5-76** definition of LAS to ensure legal clarity.

3.5 Operational Challenges and Consumer Confusion

Requiring duplicative validation notices may confuse consumers, especially if they have already received billing statements and disclosures required under federal law. It also increases the risk of regulatory inconsistencies and litigation exposure for original creditors.

We are concerned that triggering validation notices early in the account lifecycle (such as upon first communication) may give the misleading impression that the account is in default. Such communication could create consumer anxiety and generate unnecessary disputes, particularly in auto-finance contexts where accounts are acquired post-origination but pre-default.

AFSA urges the Department to revise the rule to exempt original creditors who already provide consumer disclosures under federal law, and to permit validation requirements to be met via such statements, where applicable.

4. Credit Reporting (14-Day Delay)

The proposed rule still requires that a debt collector send some sort of notice stating the debt will be reported to a consumer reporting agency—at an undefined point in time—and wait 14 days before furnishing information about the debt to a consumer reporting agency (CRA). The revisions to this provision create additional confusion about when the obligation is triggered, and do not account for creditors who are *already* furnishing information to the CRAs about the debt. Moreover, these entities that already furnish account information to the CRAs are already required under federal law to notify consumers that negative information may be furnished. Thus, this provision would create both operational and compliance risk for those already furnishing in compliance with under the FCRA, and create confusion for customers.

Furthermore, a law that imposes requirements or prohibitions with respect to a subject matter already regulated under sections of the FCRA will be considered preempted. Specifically, AFSA highlights that any attempt by DCWP to regulate the duties of data furnishers is expressly preempted. 15 U.S.C. § 1681t(b)(1)(F).

The requirement for separate notification of credit bureau furnishing and a 14-day reporting delay conflicts with the FCRA, which preempts state laws that impose additional requirements on data furnishers. National banks, which furnish credit information as part of their federally regulated operations, could challenge these municipal-level restrictions as they interfere with their ability to comply with FCRA standards. This preemption issue is likely to result in legal disputes, as national banks seek to maintain their established reporting practices without additional state-imposed burdens.

4.1 Operational Challenges

First, the revisions are unclear as to when the obligation is actually triggered. The Department should explicitly state the point in time at which the obligation begins and provide additional notice and comment on that revision.

Second, the proposed rule provides no exception for original creditors who continuously furnish account information to consumer reporting agencies (CRAs) under FCRA beginning when the account was opened and prior to any collection activity. Pausing and resuming furnishing introduces serious compliance risks and may result in inaccurate or incomplete reporting. Many posting and billing systems are not designed to suppress reporting temporarily, particularly for accounts that fluctuate in and out of delinquency, leading to misaligned reporting histories and increased consumer confusion. In addition, CRAs may flag these furnishing changes as illogical or reject them entirely, and there does not appear to be a mechanism within the Metro 2 reporting format to support the pause-and-resume structure contemplated by the proposed rule.

Third, the proposed rule creates unnecessary operational burdens on creditors by requiring them to send the notice at a minimum via the mail and in any other channel in which they are collecting debt. This unnecessarily requires creditors to bombard consumers with notices in multiple channels, when the information could just as easily be provided in one. Covered entities should be able to comply with this by sending it via one channel: either the channel in which they are collecting or via mail.

4.2 Redundancy with Federal Law

Original creditors are already required by 15 U.S.C. § 1681s-2(a)(7) to provide a notice of negative reporting to consumers. Entities complying with this provision have already met the intent of the Proposed Rule's 14-day delay, which is to notify consumers that the debt will be furnished to the CRAs. Adding a separate local requirement introduces duplication and legal uncertainty and may even inadvertently incentivize inaccurate furnishing.

4.3 Request for Exemption

We recommend revising 6 RCNY § 5-77(e)(10) to exempt financial institutions that have complied with 15 U.S.C. § 1681s-2(a)(7) and have been continuously furnishing account information (both positive and negative) under the FCRA.

4.4 Suggested Language

> Paragraph (e)(10) does not apply to:
> (1) a debt collector's furnishing of information about a debt to a nationwide specialty CRA that compiles and maintains information on a consumer's check-writing history, as described in section 603(x)(3) of the FCRA; or
> (2) financial institutions that are subject to and have complied with 15 U.S.C. § 1681s-2(a)(7).

If the Department does not adopt the exclusion above, we urge removal of the requirement to monitor for delivery of the credit reporting disclosure notice. Creditors should be permitted to satisfy this requirement by sending the notice to the debtor's last known address, consistent with standard consumer protection practices in other jurisdictions. Requiring affirmative monitoring for undeliverability introduces unnecessary complexity and is not technically feasible for many entities.

5. Electronic Communications

Debt collectors that are creditors or have acquired accounts through mergers or acquisitions and have already obtained consent to contact customers relating to their accounts should not be required to re-inform consumers of their right to revoke such consent once debt collection procedures begin at the time such consent is obtained. Requiring an additional disclosure after the start of collection activity is redundant and unnecessarily burdensome and could result in customers not receiving important account information, including information about loss mitigation programs.

It appears that **6 RCNY § 5-77(b)(5)(v)** would require debt collectors—including original creditors and creditors with inherited accounts—to include in *every* electronic communication (e.g., emails, texts) a clear and conspicuous written disclosure of:

- The consumer's ability to revoke consent to receive electronic communications at any time, and
- A reasonable method to opt out of further electronic communications or attempts to communicate.

This raises serious operational and interpretive concerns. For example:

- If a consumer replies "STOP" to a text, a character-count constrained channel of communication, but one consumers request and creditors leverage to convey important information to consumers, must the debt collector treat that as a revocation of *all* electronic communications (including emails), or just text messages?
- Would this require two distinct disclosures in each message—one for opting out of texts and another for emails or other electronic media?

Additionally, the **CTIA Short Code Monitoring Program Handbook**[2] for text communications already mandates compliance with "STOP" and similar keywords. The Proposed Rule appears to duplicate and potentially conflict with those industry standards. We recommend clarifying that the opt-out mechanism should be medium-specific (e.g., a "STOP" reply in a text revokes only text communications), and that outbound communications consistent with a customer's previously specified contact preferences and compliance with CTIA is sufficient for satisfying this requirement.

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[2] https://api.ctia.org/wp-content/uploads/2024/01/CTIA-Short-Code-Monitoring-Handbook-v1.9-FINAL.pdf

- 6 RCNY § 5-77(b)(5)(i)(B) should be amended as follows:
    - The debt collector is the original creditor or a creditor who has acquired accounts via a merger or acquisition, and obtained consent from the consumer, given directly to the debt collector, to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account ~~prior to the institution of debt collection procedures~~, and the consumer has not since revoked such consent, ~~provided that, after the institution of debt collection procedures, such debt collector informs such consumer in writing of their right to revoke such consent to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account~~;

6. Notice of Unverified Debt

If the Department declines to expand the validation notice exemption beyond creditors subject to the FCBA, then in the alternative, AFSA recommends revising or removing the proposed requirement that original creditors issue a "Notice of Unverified Debt" if they are unable or otherwise fail to verify the debt within 60 days of a consumer's request. This provision is unnecessary and counterproductive.

This provision is outlined in § 5-77(f)(7)(iv) and would impose operational challenges without offering meaningful benefit to consumers.

Consumers are already protected during the validation period, as collection efforts must be paused while verification is pending. Adding a separate, mandatory "unverified" notice risks causing confusion—especially where account histories are complex or involve legacy systems, multiple transfers, or older data.

For original creditors, (both original creditors and creditors that obtain the obligation shortly after origination and prior to any default), particularly those who maintain account servicing from inception, the risk of unverifiable debt is extremely low since the creditor and debt would be known to the consumer based on their relationship with the creditor. Yet, the rule imposes this obligation uniformly, regardless of risk level or practical challenges. The rigid 60-day timeframe may not account for all verification scenarios, creates material risk of customer confusion upon receipt of this letter, and could lead to unintended noncompliance despite good faith efforts.

We respectfully recommend that the Department **remove the requirement for a "Notice of Unverified Debt"** for creditors. Alternatively, at a minimum, creditors should be allowed more flexibility in the verification timeline and relieved of this notice requirement when they are already subject to federal standards and systemically pause collection efforts upon a timely dispute.

7. Verification of Debt Content

The current proposal would require original creditors to include records of *all* prior settlement agreements in the debt verification notice — even those that were never completed or were later breached. Additionally, the current proposal also requires the debt collector to include the final account or charged-off statement or any document reflecting the total outstanding balance owed, which was mailed to the debtor on or before the charge-off date and prior to collection of the charged-off balance.

Including expired or broken settlement offers isn't helpful to consumers and could actually lead to more confusion and even deception. It may give the impression that those settlement terms are still available or imply that the debt is negotiable, when that may not be the case. The purpose of the verification process should be to clearly confirm the *current* amount owed—not to revisit every negotiation attempt that may have occurred in the past.

Operationally, many systems don't retain historical settlement records in a way that makes this requirement feasible. Even if they do, surfacing that information serves little purpose once a settlement has lapsed or been voided.

The current proposal allows debtors to request verification or dispute a debt at any time. Therefore, requiring creditors to send a final account statement, charge-off notice, or any document showing the outstanding balance owed—mailed to the consumer before initiating debt collection procedures—could create confusion. This is because the outstanding balance at the time of verification may differ significantly from the amount originally disclosed at or before charge-off. Additionally, not all creditors issue such documents at charge-off or immediately beforehand.

We recommend narrowing this provision to focus only on **active or completed settlements and require a current account payment history, reflecting the debtor's current outstanding balance, in lieu of a prior statements or notices sent to the consumer**. This would ensure that the information provided to consumers is current, accurate, and relevant, without creating unnecessary confusion or operational burden.

8. Communication Restrictions at Place of Employment

The proposed restriction under **§ 5-77(b)(6)** prohibits debt collectors from communicating with a consumer during the consumer's work hours or through employer-provided contact information if the collector "knows or should know" such information is associated with the consumer's employment. While the provision includes an exception for communications made with prior, written revocable consent, the standard of what a collector "should know" is vague and difficult to apply consistently.

In practice, it is often not possible to determine a consumer's work hours or whether a contact number or email address is employer-issued, particularly in the absence of explicit disclosure by the consumer. This creates uncertainty and potential compliance risk, even where communications are made in good faith. For instance, if a consumer provides a mobile phone number or personal email that is later determined to be work-related, the collector could be penalized despite having no actual knowledge of the association.

In addition, permitting communications to employer-issued contact numbers or email addresses only where the consumer provided prior *written* revocable consent is inconsistent with federal and state law, including the Telephone Consumer Protection Act (TCPA), Electronic Signatures in Global and National Commerce Act (ESIGN) and other electronic-record laws, and industry practice. Written consent is not required in order to send servicing related communication to customers via email or contact numbers. Existing laws appropriately protect customers and creating an elevated standard that consent be captured in writing will add unnecessary complexity with no customer benefits. For example, the TCPA only requires prior express written consent for marketing communications and requires prior express consent for servicing communications. As a result, certain NYC residents will stop receiving important communications from creditors in the manner they are accustomed to, and potentially specifically requested, receiving simply because the status of their account triggers these NYC regulations. This will result in customer harm to NYC residents as their accounts go further past due as a result of not receiving certain past due notifications and proactive outreach relating to loss mitigation programs, resulting in increased fees and negatively effecting credit scores.

We recommend that the Department:

- Revise this section to clarify that the restriction applies **only when a collector has actual knowledge** that the contact method is employer-issued or that the communication is occurring during work hours. This clarification would better align the regulation with operational realities and reduce the risk of unintended violations, particularly for original creditors managing large and diverse portfolios.

- Remove the "written" requirement and only require "prior revocable consent" to align with existing laws, industry practice and customer expectations, and revise to include e-mails in this consent-exception.

8.1 Inconvenient Time

The proposed restriction would prohibit communications after 9 p.m. and before 8 a.m. without written consent. The current standard provides an assumption that phone calls made during such time are *assumed* to be inconvenient. Creditors are not interested in making calls to their customers at any inconvenient time, but they should be able to make a call at a customer's request at a time specified by that customer. Creditors should not be required to inconvenience a customer who asks for a call at 9:15 p.m. by demanding the customer send such request in writing—doing so only serves to damage the relationship between creditor and customer, and may lead to delays for the customer receiving needed assistance. Further, given the broad definition of "communication," a creditor's attempts to reach a consumer during presumed convenient times, may not be delivered or retrieved by the consumer until after 9 p.m., leading to presumed violations of this proposed rule (e.g. a collector may send an email before 9 p.m., but a consumer's server could cause delays resulting in the message being delivered in an in-box after 9 p.m., a situation completely outside of the collector's control).

8.2 Cease and Desist

The proposal seeks to eliminate the written requirement for consumers seeking full cease and desist treatment from a debt collector. The written requirement is critically important for consumers and debt collectors alike to provide a clear understanding of the consumer's request. This provision could be subject to multiple interpretations as debt collectors try to determine what constitutes "notice" of a consumer's interest in ceasing ALL communication. For example, would a customer's request to "please stop calling me" constitute notice to cease all communications, or just phone calls? While debt collectors should honor a consumer's request to communicate through a particular channel and avoid communicating during known inconvenient times, it may not always be clear to a phone specialist when a customer is seeking to end all communications, and asking the customer to submit such a request in writing will establish clarity for both sides. Debt collectors who have no further means to communicate are more likely to accelerate litigation, as one of the only remaining means to recover from a consumer, so ensuring that accounts are not treated as "full cease and desist" if a consumer really did not intend to request such, is critical to protect the interests of consumers and encourage ongoing communications between the parties.

8.3 During Work Hours and through Employer Provided Channels

The proposed restriction under **§ 5-77(b)(6)** prohibits debt collectors from communicating with a consumer during the consumer's work hours or through employer-provided contact information if the collector "knows or should know" such information is associated with the consumer's employment. The standard of what a collector "should know" is vague and difficult to apply consistently. While the provision includes an exception for communications made with prior, written revocable consent, that exception only applies to "direct numbers" and not e-mail addresses.

In practice, it is often not possible to determine a consumer's work hours or whether a contact number or email address is employer-issued, particularly in the absence of explicit disclosure by the consumer. This creates uncertainty and potential compliance risk, even where communications are made in good faith. For instance, if a consumer provides a mobile phone number or personal email that is later determined to be work-related, the debt collector could be penalized despite using contact information specifically provided by the consumer and having no actual knowledge of the association.

We recommend that the Department revise this section to clarify that the restriction applies **only when a debt collector has actual knowledge** that the contact method is employer-issued or that the communication is occurring during work hours. This clarification would better align the regulation with operational realities and reduce the risk of unintended violations, particularly for original creditors managing large and diverse portfolios. We also recommend that the Department remove the "written" requirement and only require "prior revocable consent" to align with existing laws, industry practice and customer expectations, and expand that exception to e-mails as well as direct numbers.

9. Frequency of Communications

AFSA appreciates the Department's revisions to **§ 5-77(b)(1)(iii)(A)** that clarify communication frequency limits apply on a **per-account basis** rather than a per-consumer basis. This change reflects a more practical and operationally feasible framework, particularly for creditors managing multiple products or accounts for a single consumer.

However, even under the per-account approach, there remains a risk that the frequency limitation could unintentionally restrict helpful or necessary communications—such as those related to payment assistance, account clarification, responses to consumer inquiries, or important notices about imminent consequences of non-payment (e.g., notices about repossession, negative credit reporting, imposition of late fees, etc.).

AFSA recommends that the Department:

1. **Retain the per-account standard**, which better reflects industry operations and reduces the likelihood of consumer confusion.
2. Clarify that **customer-initiated communications, mailed correspondence, billing statements, and legally required notices** are excluded from the frequency calculation, as these serve important consumer protection functions and are not indicative of harassment.
3. **Increase the frequency limit**, particularly for non-phones channels which have been recognized by the CFPB as less intrusive communication methods, to allow opportunities for open dialogue with customers to avoid additional fees, negative credit reporting, or further delinquency.

This balanced approach would preserve the rule's intent while allowing for efficient, compliant, and consumer-focused account servicing.

AFSA recommends revising the proposed Statute of Limitations (SOL) disclosure requirements to avoid unnecessary duplication and operational burden. Specifically, we urge the Department to eliminate the requirement to redeliver a written SOL disclosure after every oral communication, as long as the disclosure has already been made orally in a compliant manner. We also recommend removing the requirement to monitor for undeliverable return mail. Instead, creditors should be permitted to satisfy their obligation by sending the disclosure to the consumer's last known address, consistent with common standards under other consumer protection statutes.

10. Public Websites

The proposed rules require that debt collectors with websites accessible to NYC consumers include specific disclosures on their public homepage. This includes a reference to the NYC Department of Consumer and Worker Protection (DCWP) and a required link to "a Glossary of Common Debt Collection Terms and other resources available in different languages at www.nyc.gov/dcwp" (§ 5-77(f)(1)(vi); § 5-77(h)(2)). However, when clicking the link, consumers are directed to the DCWP's main landing page. A per se "glossary" does not appear to exist using the site's search function, and the only visible language feature is a general "Translate" drop-down menu. Including a direct link to a glossary—if one exists—or revising the disclosure language to better reflect the actual content available could help avoid unnecessary consumer confusion.

In addition to this ambiguity, the requirement poses broader concerns for original creditors. Unlike third-party debt collectors, whose websites are focused solely on collections, creditors often offer a range of financial products and services on their websites. Embedding a collection-related link across a general-use site could mislead consumers, especially those from outside NYC who are visiting the site to explore loan or account options. This misalignment may inadvertently suggest the consumer is in collections, harming the customer experience and introducing reputational risks.

Further, requiring public homepages to include government-hosted links raises security, privacy, and legal concerns, particularly when the linked resources are not actively maintained or do not function as described. Creditors would also bear the ongoing burden of verifying that third-party links remain accurate and up to date, increasing compliance uncertainty.

AFSA recommends that the Department remove this provision or, alternatively, revise this provision to reflect the actual structure of the DCWP site, and to account for the operational and legal implications of applying this mandate to creditor websites not solely dedicated to debt collection.

11. Record Retention

The rules do not clearly specify how debt collectors should manage records for consumers who relocate in and out of New York City over the life cycle of an account. Debt collectors should not be obligated to retain records indefinitely, as this heightens the risk of data breaches and raises privacy concerns. We request that the Department provide clarity regarding collectors' responsibility to maintain records.

12. Effective Date

The proposed amendments represent a sweeping and complex overhaul of New York City's debt collection rules. As currently drafted, the rules are scheduled to take effect on October 1, 2025. We strongly urge the Department to postpone the effective date and provide the industry with **no less than 18 months from the date of final adoption** to come into full compliance. Furthermore, the scope of the rule should only cover those debts that are accelerated or charged off after the effective date of the rule. This will allow creditors the appropriate time needed to undertake the modification of a host of operational processes to implement the new rules and is essential to allow for full compliance across systems, disclosures, and workflows.

Without further amendments, as described above, given the breadth of these changes, implementation will require substantial modifications to systems, disclosures, compliance workflows, and consumer communication protocols that cannot be resolved in a short timeframe. We respectfully ask the Department to recognize that a compliance window of at least 18 months from finalization of the rules is necessary to ensure consumer protections are met without triggering unintended disruptions, inaccurate reporting, or rushed legal exposure. This extended timeline is consistent with how similar rules have been implemented in other jurisdictions and aligns with the operational reality of financial institutions and third-party servicers.

CONCLUSION

We respectfully request that the Department carefully consider these likely consequences and take action to protect both NYC consumers and financial institutions from the unintended negative effects of the proposed rules. We urge the Department to exclude creditors collecting their own debts, including assignees of motor vehicle retail installment contracts, from the amended rules or, at a minimum, limit their applicability to only after the debt is accelerated or charged-off. Additionally, we recommend revising specific provisions to align with the operational realities of creditors and extending the implementation timeline by at least 18 months to ensure smooth and full compliance—unless the scope of the final rule is narrowed significantly to reduce the associated burden.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at dfagre@afsaonline.org or Elora Rayhan erayhan@afsamail.org at your convenience.

Sincerely,

Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association

From:	Andrea Ashburn
To:	rulecomments (DCWP)
Cc:	Daphne Schlick; Will Foote
Subject:	[EXTERNAL] NYLAG Comments on DCWP Proposed Debt Collector Rules
Date:	Tuesday, June 10, 2025 1:19:35 PM
Attachments:	Outlook-zzrflfvx.png NYLAG Comment to Proposed Further Amendments of Debt Collector Rules.pdf

Hello,

Attached please find NYLAG's Comments on Proposed Further Amendments to Debt Collector Rules.

Best,

Andrea Ashburn

Legal Fellow, Special Litigation Unit
any pronouns
100 Pearl St. | New York, NY 10004
[redacted]
NYLAG
New York Legal Assistance Group

NYLAG
New York Legal Assistance Group

June 10, 2025

Sent via email: Rulecomments@dcwp.nyc.gov

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Comments on Proposed Further Amendments of Debt Collector Rules, dated March 25, 2025 and Notice of Adoption of the Final Rule, dated August 12, 2024.

To whom it may concern:

The New York Legal Assistance Group (NYLAG), a not-for-profit legal services organization founded in 1990, submits these comments in strong support of the Department of Consumer and Worker Protection's (DCWP) Proposed Further Amendments of Debt Collector Rules, dated March 25, 2025 (Proposed Amendments) and Notice of Adoption of the Final Rule, dated August 12, 2024 (NOA).

NYLAG Encounters Defective Default Judgments Daily

NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. We are dedicated to providing free legal services to low-income New Yorkers in poverty or crisis.

Every day, attorneys in our Consumer Protection Unit and Special Litigation Unit work with individual consumers and families facing unconscionable, deceptive, abusive, and unfair debt collection and lending practices. In many consumer credit matters, NYLAG clients were not properly served and are unaware of the lawsuit against them until their wages are garnished, their bank accounts are frozen, or a lien is placed on their home due to a default judgment based upon deficient supporting documentation. Consumers are then placed in the difficult position of defending against the enforcement of these defective default judgments. As a result, we assist consumers in successfully challenging default judgments daily.

Through this work, NYLAG attorneys and clients are keenly aware that default judgments are unreliable means to verify underlying debt. NYLAG is in strong support of the DCWP's Proposed Amendments and NOA which would prevent the use of default judgments as debt verification. *See* Proposed Amendments (to be codified at 6 RCNY § 5-77(f)(7)(vi)) ("[A] copy of a judgment obtained by default does not provide the consumer verification of the alleged debt."). The Proposed Amendments and NOA instead require debt collectors to provide more robust information to verify a debt, including, "a copy of the debt document issued by the originating creditor," records relating to prior settlement agreements, and "the final account statement or charge-off statement." Proposed Amendments (to be codified at 6 RCNY § 5-

77(f)(7)(v)). These changes protect consumers who have faced, or are at risk of facing, default judgments on the basis of inadequate or fraudulent debt information.

Sewer Service Leads to High Numbers of Default Judgments in Civil Court

"Sewer service," or the failure of plaintiffs to effectuate lawful service of process upon defendants, is an endemic issue throughout New York Civil Court. Sewer service deprives consumer defendants, including many NYLAG clients, of notice of the lawsuit against them, often resulting in default judgments against unsuspecting defendants. As the N.Y.C. Bar Association Report explained, "[d]ue in large part to sewer service, the default rate has always been high in Civil Court cases," and "tens of thousands of individuals' lives are upended by unlawful service of process each year."[1] Despite efforts to combat sewer service, the practice is still prevalent in New York Civil Court.[2] When defendants do not receive proper notice of the collection lawsuits against them, they are unable to challenge the merits of the claims. As a result, our clients' default judgments often arise based on nonexistent or inconsistent underlying debt documentation. Default judgments do not provide meaningful verification of the underlying debt.

Third-Party Debt Buyers Sue NYLAG Clients Without Adequate Debt Documentation and Obtain Default Judgments

Many NYLAG clients are sued by third-party debt buyers who never obtained underlying debt documentation of the alleged debt. The consumer often does not have the proper notice to challenge the merits of a case, including the legitimacy of the alleged debt, before a default judgment is entered against them. However, if the consumer had been able to challenge the debt prior to entry of the default judgment, the third-party debt buyer plaintiff often would not have been able to meet its basic legal burden to show the consumer's alleged indebtedness.

For example, NYLAG client Gurinder was sued by a third-party debt buyer in 2007 for a debt that was not his. Gurinder did not receive service of process, and a default judgment was entered against him. Gurinder remained unaware of the lawsuit until the third-party debt buyer finally executed the judgment sixteen years later. Gurinder did not recognize the alleged debt and appeared in court to challenge the default judgment. The Civil Court vacated the default judgment and ordered the third-party debt buyer to serve all underlying debt documents in discovery. However, after several months the third-party debt buyer was unable to produce a *single* document related to the underlying debt and ultimately the case was discontinued.

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[1] N.Y.C. Bar Association Committee on N.Y.C. Civil Court Committee on Consumer Affairs, "Out of Service: A Call to Fix the Broken Process Service Industry," at 2. April 2010. https://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf.

[2] *See* "Deceptive Delivery—The Real Cost of 'Sewer Service' in the Courtroom," NEW YORK LEGAL ASSISTANCE GROUP (April 1, 2025), available at https://nylag.org/new-report-deceptive-delivery-the-real-cost-of-sewer-service-in-the-courtroom/

As another example, NYLAG client Jesus was sued for debt on a retailer credit card that he never had. The third-party debt buyer plaintiff alleged to serve Jesus at an address presumably connected with the underlying retailer credit account. Jesus had never lived at that address. Because Jesus was not served, a default judgment was entered against him. Eleven years later, the plaintiff contacted Jesus to collect on the judgment. Jesus assumed that this was a scam because the debt concerned a retailer credit card that he never obtained. The plaintiff then proceeded to garnish Jesus's wages for over four years. The plaintiff never provided Jesus with any debt documentation.

Even in cases where the third-party debt buyer plaintiff provides debt documentation, the information is insufficient to verify and attribute the debt to the consumer defendant. Default judgments are often obtained against defendants who later provide information highlighting inconsistencies in the debt information and disproving their alleged indebtedness in the underlying case. For example, a third-party debt buyer plaintiff sued NYLAG client Bothina for an alleged debt. However, Bothina did not owe the alleged debt and never had a relationship with the underlying creditor. The plaintiff did not provide Bothina with proper notice of the lawsuit, so she was unable to appear to challenge the merits of the plaintiff's case. The third-party debt provider, in support of its application for default judgment, provided information showing Bothina's alleged indebtedness from 2020. However, Bothina did not live in the United States in 2020. In addition, the third-party debt buyer's information included an address where Bothina had never lived. After Bothina appeared in court to dispute the judgment, the judgment was vacated, and the action was dismissed.

NYLAG attorneys routinely and successfully challenge default judgments in similar cases brought by third-party debt buyers, and the underlying case is often dismissed. Third-party debt buyers rely on default judgments: if the consumer had proper notice of their case to be able to challenge its merits, it would become clear that they do not owe the underlying debt.

Judgment Debt Buyers Purchase Default Judgments Without Obtaining the Underlying Debt Documents

Numerous NYLAG clients face default judgment execution on behalf of judgment debt buyers. Judgment debt buyers purchase default judgments from the plaintiff creditor and *rarely* obtain underlying debt documentation. In one case, NYLAG client Feng was sued by a bank where she had never had an account. The plaintiff alleged personal service at an address where Feng never lived. In 2008, the plaintiff obtained a default judgment against Feng. In 2023, a putative judgment debt buyer restrained Feng's bank account pursuant to the judgment. This debt buyer did not inform Feng nor the court of the change in judgment creditor. When Feng challenged the execution and default judgment in court, the judgment buyer prolonged litigation for over *two years* and at no point provided *any* documentation of the underlying debt.

Feng is not alone. There is an industry of judgment debt buyers who purchase default judgments with *no* documentation of the underlying purported debt. As explained above, default judgments are often obtained in cases that do not withstand scrutiny to a challenge on the merits. They are thus insufficient tools to verify the legitimacy of the debt. Nonetheless, *pro se* consumers are routinely only armed with proof of a default judgment when unfamiliar third-party judgment creditors garnish or restrain their funds. These consumers face an uphill battle: lose funds for a debt they do not owe, or challenge the debt without sufficient information.

The DCWP's Proposed Amendments and NOA, however, would empower consumers to challenge improperly obtained default judgments and seek proper verification of alleged debt. When consumers face execution by an unknown third-party judgment buyer, they could obtain the information they need to understand the origins of the debt, and if they do not owe the debt, equip them with the information needed to challenge the default judgment.

NYLAG Strongly Supports the Proposed Amendments and NOA

These stories only reflect a handful of numerous NYLAG clients, and New York consumers, that face improper default judgments. These consumers never had their day in court to challenge the merits of the collection case, including the legitimacy of the debt. DCWP's Proposed Amendments and NOA effectively deal with the on-the-ground reality of default judgments: a "judgment obtained by default does not provide the consumer verification of the alleged debt." NYLAG strongly supports DCWP's Proposed Amendments and NOA. These changes would provide accountability for debt collectors who do not possess debt documentation and empower consumers to make informed decisions when faced with judgment execution.

New York State has a long tradition of being a leader on consumer protection. These proposed rules continue that tradition. NYLAG respectfully submits these comments and requests the implementation of the Proposed Amendments and NOA. NYLAG thanks the DCWP for the opportunity to participate in the enactment of these rules designed to provide greater protections for vulnerable New York consumers.

From:	NYSCBA President
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] NYSCBA Comments
Date:	Wednesday, June 11, 2025 10:09:35 AM
Attachments:	NYSCBA Comments June 10.pdf

Good Day,
Please see the comments from our Bar Association.
Thank you.

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New York State Creditors Bar Association
Timothy Wan, Esq., President

NYSCBA
NEW YORK STATE CREDITORS BAR ASSOCIATION, INC.

https://nyscba.org/

June 10, 2025

Re: Proposed Further Amendments to DCWP rules relating to debt collectors

The New York State Creditors Bar Association (the "NYSCBA")[1] would like to thank the New York City Department of Consumer and Worker Protection (the "DCWP" or "Department") for this opportunity to further comment on the Department's proposed amendments to its rules relating to debt collectors. These regulations are vitally important to our members and their businesses. We appreciate the opportunity to engage in a constructive dialog regarding these important updates.

Our organization applauds the effort of the Department to seek further feedback in response to its prior proposed amendments. While the NYSCBA does not address the changes applicable to original creditors within these comments, NYSCBA's comments reflect a continuing effort to harmonize, as much as possible, the implementation of these new city regulations, state laws and federal regulations by keeping a consistent set of definitions and avoiding duplicative or inconsistent requirements that create confusion for consumers and debt collectors alike.

1. <u>The prohibition on communication during working hours should be eliminated.</u>

The prohibition on communicating with a consumer "at a time the debt collector knows or should know is during the consumer's work hours[2]" is unnecessary, requires a complex consent process for consumers and is unworkably vague. First, Regulation F and the existing DCWP rules already prohibit debt collectors from contacting consumers at inconvenient times. Today, a consumer can simply notify a debt collector of any working hours that are inconvenient for the collector to contact the consumer, and the collector is prohibited from contacting the consumer at those times. This prohibition is, therefore, redundant. Secondly, the consumer may wish to be contacted during the working hours which require a cumbersome consent process under this rule inconveniencing consumers. Finally, the prohibition is difficult to implement and vague because there is no definition or manner that prescribes how the collector "should know" the consumer's working hours. As a result, the NYSCBA respectfully requests this prohibition be eliminated.

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[1] The New York State Creditors Bar Association is an organization of legal professionals in the area of consumer and commercial debt resolution. The attorneys and their firms who make up the Bar Association run professional practices that operate under an ethical framework promulgated by the judiciary in search of durable and equitable post-judgment debt resolutions.

[2] "Communicate or attempt to communicate with a consumer at [the consumer's place of employment, including] <u>a time the debt collector knows or should know is during the consumer's work hours,</u> or by sending an electronic message to an email address or a text message or <u>call to a phone number</u>, that the debt collector knows or should know is provided to the consumer by the consumer's employer. Notwithstanding the foregoing, such communication is permissible where the consumer provided <u>prior written revocable</u> consent to the debt collector to use a direct number [at the consumer's place of employment] <u>provided by the consumer's employer</u> as the consumer's preferred method of contact for the debt and the consumer has not otherwise revoked such consent and such communication does not violate any other provision of local, state or federal law." 5-77(b)(6).

2. The disclosure under § 5-77 (f)(1)(v) conflicts with federal law and should be eliminated or modified.

While the NYSCBA appreciates the revisions made to this disclosure from the initial draft, we continue to believe that the disclosure required under the proposed further amendment conflicts with federal requirements, will confuse consumers and generate litigation risk for debt collectors who attempt in good faith to comply with the rule.

As the DCWP is aware, the Consumer Financial Protection Bureau published the Model Validation Notice (the "MVN"). The MVN provides a safe harbor for compliance with the validation information content and format requirements.[3] The Model Validation Notice includes specific language that ensures compliance with 12 CFR § 1006.34(c)(3)(i) and 34(c)(3)(v) which govern the consumer's right to request validation of the debt under the FDCPA. Federal law holds that the End Date of Validation period is "30 days after the consumer receives or is assumed to receive the validation information."[4] To comply with these requirements, the MVN language reads: "If you write to us by <End Date of Validation Period>, we must stop collection on any amount you dispute until we send you information that shows you owe the debt…"[5]

The disclosure required by § 5-77 (f)(1)(v) is inconsistent with the language in Model Form B-1.[6] First, the disclosure states there is "no time limit" to dispute the debt rather than prior to the end of the validation period as envisioned by federal law. Secondly, the disclosure states that the consumer may request verification of debt "using any of the way [the debt collector] contacts you" rather than in writing as required by federal law. Finally, while the updated language clarifies that these options are available under New York City law, the language is still at odds with federal law.

As a result, the conflicting requirements under federal and local law listed in the letter risks confusing consumers. During the validation period, the debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and to request the name and address of the original creditor.[7] Under these proposed rules, consumers would see one set of federal requirements on the front of the MVN and another set of conflicting City requirements on the back of the MVN, with insufficient clarifying language, generating confusion.

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[3] 12 CFR § 1006.34(d)(2); see also 12 CFR § 1006.34(c) and 34(d)(1).
[4] 12 CFR § 1006.34(b)(3)(i).
[5] Model Form B-1, Appendix B to 12 CFR § 1006(Regulation F).
[6] **PLEASE READ: Information About Your Rights as a New York City Consumer**

- **There is no time limit for a New York City consumer to dispute the debt in collection under New York City law**. You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.

- **You must get a response to the disputed debt in [45] 60 days**. Once you dispute the debt, the collector must stop collection. Within [45] 60 days after receiving your dispute, a debt collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection. Be sure to keep a copy of all letters.

- **Inform the debt collector if any charges arise from medical debt**. If you have a low or limited income, you may be eligible to apply for help under [the] a hospital's "Financial Assistance Policy." Medical debt cannot be reported on your credit report. ***Note****: Medical debt does not include charges to a credit card unless the credit card is offered specifically for the payment of health care services, products, or devices.*

[7] 12 CFR § 1006.38(b)(1).

This conflict will cause litigation against debt collectors who attempt in good faith to comply with these requirements. The FDCPA "is being privately enforced mostly on the hyper-technical margins of permissible collection activity…hav[ing] drifted quite far from the truly awful collection practices—threatening violence, disclosing a consumer's personal affairs to others, impersonating public officials—that prompted Congress to enact the FDCPA…The courts are to some extent simply burdening the collection industry with a continuing portfolio of litigation that potentially raises the cost of credit for all consumers."[8] Further, Senior District Court Judge Leo Glasser noted that the volume of alleged FDCPA violations has "quintupled…This standard prohibits not only abuse but also imprecise language, and it has turned FDCPA litigation into a glorified game of 'gotcha,' with a cottage industry of plaintiffs' lawyers filing suits over fantasy harms the statute was never intended to prevent."[9]

As a result, the NYSCBA recommends that this disclosure be eliminated in its entirety.

Additionally, the disclosure includes specific information about medical debt that is not applicable to instances where the debt is not medical debt. This additional information should only be required where the debt is medical debt.

3. <u>The requirements surrounding the "Pre-charge-off period" are vague and confusing</u>

Under the proposed further amendments, if the amount asserted to be owed by the consumer changed during the "pre-charge-off period," the debt collector must add a line for the amount of the debt as of the date of the last written notification sent to the consumer on or before the institution of debt collection procedures, except if this information is not available to the debt collector at the time of the itemization.[10]

This requirement adds additional unnecessary and confusing information to the MVN that conflicts with the requirements under federal law. It is not clear what value this additional material provides as it does not inform the consumer of the amount of debt that is currently due and may cause unnecessary confusion. As a result, the NYSCBA recommends removing this requirement.

4. <u>A Copy of the Judgment Must be Sufficient Verification of the Debt.</u>

When a court reduces the facts of the case to a judgment, the judgment becomes the applicable document. The judgment is entitled to the full faith and credit of every other state. By requiring that additional documentation be provided in order to enforce a judgment, this provision is unconstitutional. As a result, the provision should be modified.

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[8] <u>Islam v. Am. Recovery Serv. Inc.</u>, No. 17-CV-4228 (BMC), 2017 WL 4990570, at *3 (E.D.N.Y. Oct. 31, 2017).
[9] <u>Kraus v. Prof'l Bureau of Collections of Maryland, Inc.</u>, 281 F. Supp. 3d 312, 322 (E.D.N.Y. 2017).
[10] 5-77(f)(1)(viii)(B)

This will be exploited as a tactic to impair our client's rights by requiring attorneys to have in their possession additional documentation long after judgment has been entered and documentation that may not be available if the judgment is entered from a sister state. The regulations create an extra-judicial stalling tactic that far exceeds the scope of CPLR Article 31. This will force attorneys to discontinue the action or seek a delay in legal proceedings, impairing the rights of creditors to seek redress in court. As it is currently written, consumer attorneys can counsel their clients to invoke this tactic not only post-discovery or after a dispositive motion has been granted but even after a judgment has been entered by the court. This defeats the finality accorded to matters that have been reduced to judgment by the courts.[11]

The finality of judgments has also been recognized and addressed in the FDCPA, which specifically provides that verification of a debt already reduced to judgment is satisfied by providing a copy of the judgment.[12] The proposed regulation has the effect of requiring attorneys to engage in post-judgment discovery, even after a court has validly reduced a creditor's claim to a judgment. This may even be long after the relevant document retention period has expired for the creditor, making verification impossible.

The result of this requirement, perhaps years after judgment has been entered, further impairs our clients' rights to enforce judgments entered by the courts of this state. Creditors who have already successfully litigated their claims will be prevented from exercising their rights. Indeed, the proposed disclosure and verification requirements post-judgment are unnecessary, as the legislature and the courts already provide consumers with the ability to address judgments that consumers believe were entered improperly. New York State trial courts are held with the responsibility of vacating default judgments if the facts establish a reasonable excuse for the default and the possibility of a meritorious defense to the action.[13]

5. <u>Conclusion</u>

We thank the Department for its attention to these comments which are again of vital importance to our members.

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[11] <u>O'Brien v. Lehigh Valley R. Co.</u>, 176 Misc. 404 (Sup. Ct. Erie County 1941).
[12] *See* 15 USC §1692g(a)(4); 12 CFR § 1006.34(c)(3).
[13] *See* NY CPLR §5015.

From:	franksalinger@me.com
To:	rulecomments (DCWP)
Cc:	Toni A. Bellissimo
Subject:	[EXTERNAL] Proposed Rules Relating to Debt Collectors: Comments of the Card Coalition
Date:	Tuesday, June 10, 2025 4:27:37 PM
Attachments:	CCNYCDebtCollectionFile61025415pm.pdf

The Card Coalition respectfully submits these comments in response to the proposed amendments to rules relating to debt collection—particularly to express our continued opposition to the provision defining "debt collector" to include those collecting debts they originate. Our statement also offers some suggested clarifying language.

The Card Coalition is the only national organization devoted solely to the payment card industry and related legislative and regulatory activities in all 50 states. Our members are keenly interested in the outcome of the rulemaking, and we have participated in the underlying rulemaking.

We appreciate the Department's attempt to resolve continuing issues arising from the rulemaking.

Frank M. Salinger
General Counsel
Card Coalition
[redacted]
www.cardcoalition.org

June 10, 2025

New York City Department of Consumer & Worker Protection
42 Broadway
New York, NY 10004
Via email at: Rulecomments@dcwp.nyc.gov.

Re: Proposed amendment to rules relating to debt collectors.

The Card Coalition respectfully submits these comments in response to the proposed amendments to rules relating to debt collection—particularly to express our opposition to the provision defining the term "debt collector" to include those collecting debts they originate.[1]

While we appreciate the Department of Consumer & Worker Protection Department's (hereinafter the "Department") attempt to resolve continuing issues arising out of the rulemaking and the deferred effective date, we again emphasize that the rule fails to recognize the inherent differences between original creditors and third party debt collectors—a distinction well-understood by Congress when it enacted the Fair Debt Collection Practices Act in 1977.

1. Public Policy Concerns

Creditors differ from third-party collectors

Third-party debt collectors and debt buyers differ significantly from creditors collecting their own debts. The two have entirely different business models with very different incentives.

Debt collectors generally are paid only by collecting and frequently collect less than a hundred percent of the debt. Debt buyers typically purchase bad debt for a fraction of the debt owed and generally collect only a fraction of that amount. Neither attempts to salvage the consumers' credit score nor has any prospect of a future or ongoing relationship with the consumer.

On the other hand, creditors benefit by ensuring the customer does not default, collecting the debt without resorting to advanced collections (such as turning the account over to debt collectors or lawsuits), and increasing the likelihood of future mutually beneficial relationships with the customer.

Creditors have an incentive to maintain a relationship with their customers, and they risk losing the relationship in addition to the entire balance when they cannot effectively communicate with their customers to collect amounts that have fallen delinquent.

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[1] The Card Coalition consists of major national card issuers and related companies with an interest in state legislative, executive, and regulatory activities affecting the payment card industry and consumers. We are the only national organization devoted solely to the credit card industry and related legislative and regulatory activities in all 50 states. To learn more about the Card Coalition and our members, please visit www.cardcoalition.org.

Communication between creditors and their customers is critical to helping customers stay current or to work with them if they face hardship.

Creditors call their customers for many reasons, only one of which is the collection of an account. Creditors make many different types of calls related to the status of the account, such as calls the customer requested, alerting the customer regarding possible fraud, offering or follow-up regarding extensions and modifications, responding to complaints, informing about failed payment (i.e., returned due to insufficient funds), about lost payments, and regarding potential bankruptcy filings.

Congress understood the difference when enacting the FDCPA

The policy distinction between creditors collecting their own debts and third-party collection agencies is no accident. Congress recognized that the FDCPA should not apply to creditors. When the FDCPA was passed in 1977, Congress recognized that creditors are different than and do not operate like debt collectors. While much has changed since 1977, this essential fact remains the same.

While consumers cannot choose their debt collectors, they usually make conscious decisions when selecting a creditor.

The Senate Report on the FDCPA states, "Unlike creditors, who generally are restrained by the desire to protect their goodwill when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them."[2]

Congressional intent aside—the FDCPA's Congressional findings and declaration of purpose found: "There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many ***debt collectors***. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."[3] Congress further found: "It is the purpose of this subchapter to eliminate abusive debt collection practices by ***debt collectors***, to insure that those ***debt collectors*** who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[4] (emphasis added)

The Government Accountability Office also reaffirmed Congress' important distinction between debt collectors and creditors when it stated, "Because first-party collectors use the issuers' name and are collecting from current customers, there is an emphasis on preserving the relationship with the consumer and mitigating the negative perception that consumers can have about their accounts being forwarded to collection."[5]

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[2] S. REP. 95-382, S. Rep. No. 382, 95TH Cong., 1ST Sess. 1977, 1977 U.S.C.C.A.N. 1695, 1977 WL 16047 (Leg.Hist.)

[3] 15 U.S. Code § 1692 (a)

[4] 15 U.S. Code § 1692 (b)

[5] U.S. Gov't Accountability Office, GAO-09-748, Fair Debt Collection Practices Act Could Better Reflect the Evolving Debt Collection Marketplace and Use of Technology (2009), available at http://www.gao.gov/assets/300/295588.pdf

Creditors are incentivized to assist consumers

Customers are hard to come by. Once obtained, creditors are motivated to maintain that relationship rather than lose it to a competitor. Extending credit, however, comes with its inherent risks. Accounts that go into default or do not pay timely ultimately affect a company's costs and risks. Therefore, creditors are additionally incentivized to maintain a customer in a "paying" relationship.

As a report from the Tower Group states, "The cost to replace one bank card customer ranges from $160 to over $200, and issuers that work with their customers through this difficult period will retain customers for life."[6]

In other words, creditors use debt collection as a customer retention strategy and are incentivized by avoiding the costs of acquiring new customers.

Debt collectors usually collect only mature, static balances from consumers with whom they have no prior or ongoing relationship. On the other hand, creditors collect from their own customers with whom they have a long-term and continuous relationship. These customers also carry other balances on accounts with the creditor that are not delinquent.

Unlike debt collectors, whose business is collecting defaulted loans or accounts, creditors' primary business is selling goods on credit or making new loans. Creditors, such as captive finance companies, want to sell more cars for their parent companies. Other lenders want to expand their customer relationships to selling them additional products, opening deposit accounts, or simply looking for repeat business.

Creditors can often provide workable alternative solutions to defaulting consumers and are motivated to use those solutions to preserve the relationship with the consumer. These solutions may not be present for debt collectors, particularly in the later stages of collections, due to the nature of the relationship and the timing of the collection activity.
These solutions include, but are not limited to, extensions (modifying the payment schedule to allow the customer to defer a payment) and rewrites (modifying the contract to reduce the customer's payment amount).

Use of these solutions will typically allow a customer who is already delinquent and therefore in default to bring their account current and avoid more late charges, negative credit reporting, and even repossession.

This means that creditors have substantial "skin in the game." They invest not only their money but also their valuable customer relationships – relationships they very much want to keep.

Debt collectors, however, are at the opposite end of the spectrum. They have little to lose. That accounts for some of the practices the FDCPA was designed to prevent. Because Congress recognized that creditors have so much "skin in the game," Congress already decided that creditors should not be subject to the same debt collection restrictions as debt collectors.

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[6] Moroney, Dennis, "Revitalize the Credit Card Pre-Charge-off Collection Process and Improve the Bottom Line." TowerGroup. April 2009. Quoted in "Leveraging Collections as a Customer Retention Tool," by Julie Austin and Vytas Kisielius of Collections & Recovery, TSYS, Jan. 2010. Available at: http://www.ftc.gov/sites/default/files/documents/public_comments/ftc-workshop-debt-collection-2.0-protecting-consumers-technology-changes-project-no.p114802-00007%C2%A0/00007-58348.pdf

We urge caution before changing any debt collection law

While it is tempting to imagine that making debt collection more difficult benefits consumers, in reality, the effective, efficient, and fair collection of consumer debts benefits consumers. Without the ability to enforce contracts, credit would be scarcer and more costly for most of our customers who pay on time.

A leading economist put it this way in 2015:[7]

"The regulation of debt collection activities presents a challenge from an economic perspective. In theory, well-designed debt collection rules can aid both borrowers and lenders by increasing access to and reducing prices for consumer credit. But poorly designed rules can reduce the effectiveness of debt collection, which will increase losses and lead to higher prices and less access to credit for consumers, especially low-income and high-risk consumers. Rules intended to protect consumers from some credit collection practices could lead creditors to use alternatives that consumers prefer even less."

2. Specific amendments, questions, and concerns

1. **Scope: Proposed amended definition of "Debt Collection Procedures" is vague and conflicts with other provisions of the rule. The definition should be revised to clarify that for creditors, "debt collection procedures" is after charge-off.** It should not matter whether a creditor has a different department within their organization to perform collection activity for non-delinquent vs. delinquent pre-charge-off debt.

   As amended, the definition of "debt collection procedures" conflicts with the definition of "pre-charge-off period," which is defined as "the period of time commencing with either (a) the date of the last periodic statement, written account statement, or invoice, which was provided to the consumer by a creditor ***before the institution of debt collection procedures***, or (b) the date the last payment was applied to the debt, and ending with the date the debt was charged-off.

   Subpart (4) of the definition should be amended as follows:

   > The term "debt collection procedures" means any attempt by any person to collect a debt after any of the following:
   >
   > (4) the ~~original~~ creditor has charged off the debt or transferred the debt to another person to collect, including ~~but not limited to charging off the debt~~, selling the debt, or placing the debt with a debt collection agency, or an attorney or law firm~~, or with another department or unit for collection~~.

2. **Credit Reporting**: Financial institutions subject to 15 USC § 1681s-2(a)(7) (FCRA Notice of Furnishing Negative Information) that have provided the notice for furnishing negative information should not be subject to 6 RCNY § 5-77(e)(10). This provision of the FCRA already requires financial institutions that extend credit and who regularly furnish information to credit reporting agencies to provide a notice of furnishing negative information, in writing, to consumers.

[7] Zywicki, Todd J.,THE LAW AND ECONOMICS OF CONSUMER DEBT COLLECTION AND ITS REGULATION, George Mason University Legal Studies Research Paper Series LS 15-17 at https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf

The last paragraph in 6 RCNY § 5-77(e)(10) should be amended as follows:

> This paragraph (e)(10) does not apply to: (1) a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681(a)(x)(3)); or (2) financial institutions that are subject to and have complied with 15 USC § 1681s-2(a)(7).

3. **<u>Electronic Communications</u>**: Debt collectors that are creditors who previously obtained consent under 15 USC § § 7001-7006—the federal Electronic Signatures in Global and National Commerce Act (ESIGN Act) should not be required to *re-inform* consumers of their right to revoke such consent after the institution of debt collection procedures. Requiring such imposes a duplicative obligation on creditors as the ESIGN Act already requires institutions to inform consumers of their right to withdraw/revoke ESIGN consent at the time such consent is obtained.

Accordingly, 6 RCNY § 5-77(b)(5)(i)(B) should be amended as follows:

> (i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if such electronic communication is private and direct to the consumer and one of the following requirements is met:
>
> (A)…
> (B) the debt collector is the original creditor and obtained consent from the consumer, given directly to the debt collector, to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account prior to the institution of debt collection procedures, and the consumer has not since revoked such consent, ~~provided that, after the institution of debt collection procedures, such debt collector informs such consumer in writing of their right to revoke such consent to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account~~; or…

4. **<u>Clear and Conspicuous Disclosures:</u>** The difficulties in rationalizing a regulatory regime designed for third party debt collectors with the operational realities faced by creditors continue when analyzing 6 RCNY § 5-77(b)(5)(v). This provision would also require original creditors, after the institution of debt collection procedures, to include clear and conspicuous written disclosures in each electronic communication stating that the person may revoke consent to receive electronic communications at any time as well as include a reasonable opt-out method to opt-out of further electronic communications or attempts to communicate.

Does this mean that if a debt collector texts a consumer and the consumer responds “STOP” that the debt collector would need to treat that as a revocation for all electronic communications (emails and texts)? Or does the Department contemplate that a debt collector must provide two disclosures in the text; one stating how to opt-out of electronic communications, and the other stating how to opt-out of texts? We urge the Department to clarify these issues.

We note the Cellular Telecommunications and Internet Association (CTIA) *Short Code Monitoring Program Handbook* [8] requires text senders to provide and comply with "STOP" and similar requests. While the guidelines are not regulations, they are enforced via monitoring and audits conducted by the CTIA.[9]

6 RCNY § 5-77(b)(5)(v) currently states:

> The debt collector must include in every electronic communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communications at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by replying "stop"; provided that, the debt collector must also accept any other word(s) sent in a response by a consumer that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's opt-out request in the same language as in the initial electronic communication that prompted the response from the consumer or in any language used by the debt collector to collect debt.
>
> **We recommend that this provision be clarified to reflect the Department's answer to the questions posed above.**

4. **Delayed Effective Date**: While we appreciate the temporary reprieve given by the delayed effective date, more time is needed. We note—during this protracted rulemaking —creditors have been out of scope and have not been given the same opportunity to prepare for changes as third party debt collectors had. For this reason, we request a further one-year delay of the effective date.

* * *

For the reasons stated above, we urge you to revise the proposed rule to make the recommended changes outlined above. Thank you for your consideration.

Toni A. Bellissimo
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Frank Salinger
General Counsel
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[8] *See:* https://api.ctia.org/wp-content/uploads/2024/01/CTIA-Short-Code-Monitoring-Handbook-v1.9-FINAL.pdf

[9] While the CTIA does not levy fines, non-compliance could lead to violations of other privacy and security laws, such as the federal Telephone Consumer Protection Act of 1991 (TCPA) and the European Union's General Data Protection Regulation (GDPR). Additionally, non-compliance could lead to suspension of the sender's short code, thus eliminating the sender's ability to send text messages.

From:	Kelsey Dorado Bobersky
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] RCNYS Comments / Further Amendments of Debt Collector Rules
Date:	Monday, June 9, 2025 8:59:47 AM
Attachments:	RCNYS Comments (DWCP - Further Amendments of Debt Collector Rules).pdf

You don't often get email from kelseydorado@rcnys.com. Learn why this is important

CAUTION! EXTERNAL SENDER. Never click on links or open attachments if sender is unknown, and never provide user ID or password. If **suspicious**, report this email by hitting the **Phish Alert Button**. If the button is unavailable or you are on a mobile device, forward as an attachment to phish@oti.nyc.gov.

Good morning –

Please see the attached comments from the Retail Council of New York State regarding further amendments of the debt collector rules.

Thank you and please let us know if you have any questions.

Kelsey Dorado Bobersky
Director of State & Local Government Relations
Retail Council of New York State
258 State Street
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RETAIL COUNCIL OF NEW YORK STATE
RESULTS FOR TODAY'S RETAILERS

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June 6, 2025

New York City Department of Consumer and Worker Protection
Consumer Services Division
42 Broadway, 9th Floor
New York, NY 10004

RE: Further Amendments of Debt Collector Rules

Dear Commissioner Mayuga:

The Retail Council of New York State is the state's leading trade group for the retail industry, representing member stores in New York City and across the state, ranging from the smallest independent merchants to national and international brands.

Thank you for providing an opportunity to comment on the most recent New York City Debt Collection Amendments that the Department of Consumer and Worker Protection ("DCWP") is considering making to adopt the debt collection amendments for Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(b), 20-493(a), and 20-702 of the New York City Administrative Code. We have been tracking developments closely and wanted to share the impact of the amendments on a member of the Retail Council of New York State along with proposed edits.

Background

We are commenting on behalf of brands we represent that operate online and in storefronts through New York City and the nation. Consumers in New York City and around the country who shop at the retailers' stores and online are able to apply for a co-branded or private label credit card. These credit cards are issued by a national bank and serviced directly by the retailer whose name is on the card. The retailer services all aspects of the credit card including but not limited to marketing, underwriting, processing new account applications, responding to consumer complaints, managing disputes, monitoring for fraud, sending monthly periodic statements, providing an online account management system for the consumer, and attempting to recoup funds when a consumer goes past due on their account, to name just a few. Any issues or questions with the credit card are handled by employees of the retail servicer at all stages of the credit card life cycle in the retailer's own name such as changing the consumer's address upon request, answering questions about a consumer's credit limit, or accepting payments.

The promulgation of the proposed debt collection amendments have raised some concerns for the retailer in that there are requirements in the amendments, for example, the prohibition on consumer reporting that make compliance next to impossible for a company that services a "debt" from origination through to debt collector, sometimes referred to as "cradle to grave." At both the federal and state level, a company acting in the manner and capacity that the retailer is with regard to debt collection is exempt from the definition of a debt collector so these issues do not arise in other rules impacting debt collection practices.

Any potential confusion that may arise for a consumer when a debt has been passed from issuer/originator to a true third party debt collector (of which the consumer may be wholly unfamiliar with) necessitating the rules that the DCWP has drafted does not exist when, in the member retailer's situation, the consumer has entered a retail store or accessed the retailer's website to apply for a credit card in the name of the retailer and the account is serviced by the retailer for the life of the account in an unbroken manner. To provide more detail, we've summarized the issues highlighted in this section below along with suggestions for adjustments to the amendments to avoid consumer confusion and increased complexity for those that service accounts from account opening through to any debt collection phase.

Detailed Review of Comments

Debt Collections Procedures

Currently, the retailer is exempt from many of the NYC DCWP's debt collection rules due to the definition of "debt collection procedures" because the retailer is interfacing with accounts for which they were required to send periodic monthly statements. The current "debt collection procedures" definition only applies to accounts where attempts are made by a debt collector after "with respect to accounts for which creditors are required to send periodic statements, the creditor has ceased sending those statements, or taken or threatened to take legal action against the consumer."

The new definition includes a new provision that broadens the definition by indicating that debt collection procedures includes situations where the original creditor transfers the debt to another person to collect…."with another department or unit for collection." Technically, for the retailer, the debt is not transferred in that the retailer has already been servicing that account since its inception but the language in the newest amendments is very broad and uses "original creditor," of which, the retailer is not. Due to this change, the retailer feels that they are now in scope for both the definition of "debt collector" as that definition includes the use of the term "debt collection procedures" along with any provisions of the rule that speak to debt collection procedures.

Debt Collector

The term "debt collector" is defined as, relevant to the retailer, "any person…who (B) <u>after the initiation of debt collection procedures,</u> regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person, <u>or debts owed or due or asserted to be owed or due to the person collecting or attempting to collect the debts.</u>"

The Fair Debt Collection Practices Act, Regulation F, and NY state law all include an exception from the definition of debt collector that allows for a person collecting or attempting to collect a debt owed or due to another if it concerns a debt that the person originated or ***concerns a debt that was not in default at the time such person obtained it***.[1]

The purpose for these exceptions is that if a person or company is servicing the debt prior to that debt moving to a past due status that they have more of an incentive to avoid aggressive or deceptive collections practices and are likely communicating with their customers more regularly. The retailer has a natural incentive to treat their customers in a manner that keeps them shopping in their stores, viewing the brand in a positive light, and using the financial products that they offer. The retailer's name is on the credit card plastic, all letters and communications, monthly periodic statements, stated on every call, every piece of marketing, etc. Becoming an overzealous debt collector is, simply put, not in the retailer's interest as it is bad for their business and their customers that they value deeply. Additionally, the exceptions that apply at the federal and state level are logical in that validating a debt for an obligation that has never changed hands and where a monthly periodic statement is provided every month should not require an additional communication which essentially provides the same information. Any inaccuracy on a monthly periodic statement can be addressed via the retailer's disputes and fraud processes for which they comply with the Fair Credit Billing Act.

<u>Other comments</u>

Section 5-77(b)(1)(iii)(E)(IX)

- This subsection states that original creditors are allowed to communicate in their normal course of business with debtors so long as the communication is unrelated to debt collection practices. The retailer is not an original creditor but is required to send notice and information that is required by law to the consumer such as an annual privacy policy required by Regulation P.
- We propose that this section expand to original creditors <u>**and**</u> those that are servicing the account from origination as well to avoid an issue with excessive communication limitations when sending notices that are unrelated to debt collection practices that are required by law or helpful to the consumer, such as fraud alerts.
- Overall, section 5-77(b) creates prohibitions for debt collectors "in connection with the collection of a debt…" so to include the carveout mentioned in the bullet above for original creditors later in this subsection calls into question whether others who are not original creditors such a service provider to a bank who services the account from sending non collections materials such as periodic statements, privacy policies, etc, which are required to be delivered by law. We propose that this exception be removed to avoid confusion for others sending non debt collection communications or to broaden the exception beyond original creditors as addressed in the first bullet above.

Section 5-77(d)(20)

- This subsection requires debt collectors to clearly and conspicuously disclose, before any attempt to collect a debt, that the communication is being recorded and the recording <u>may be used in connection with the collection of a debt</u>. Today, the retailer provides a recording for phone calls that states that the call is being recorded for quality and monitoring purposes. For

[1] 12 CFR Section 1006.2(i)(2)(vi)(B) and (C). 15 U.S. Code Chapter 41 Subchapter V Section 1692a(6)(F). 23 NYCRR Section 1.1(e)(6)(ii) and (iii).

inbound calls, it would be impossible to know the status of every consumer's account before an employee speaks to them about the purpose of their call, especially where a consumer does not validate who there are within the telephony system. To record and provide a message that states that the call is being used to collect a debt makes sense for those entities that only collect debt but creates challenges with compliance for a company that is servicing accounts from origination through to debt collection stages to employ the appropriate message to the consumer via our telephone system in a systemic manner. Additionally, a one sized fits all approach could result in a non past due guest from receiving a message about debt collections.

- We propose that this section is removed or that the definition of "debt collector" and "debt collection procedures" are edited as proposed below via the suggested text in the "Summary of Comments and Proposed Changes" section to ensure that the retailer would not need to comply with this provision.

Section 5-77(e)(10)

- This subsection prevents a debt collector from using unfair or unconscionable means to collect or attempt to collect. One of the provisions prevents a debt collector from furnishing to a consumer reporting agency "information about a *debt* unless the debt collector has sent to the consumer in the medium of communication used to collect the debt, and sent a written copy to the consumer via U.S. mail or other delivery service, a notice that states, clearly and conspicuously, that the information about the debt will be reported to a consumer reporting agency and has waited 14 consecutive days after sending such notice."
- Additionally, the amendments have created a waiting period wherein the debt collector must monitor for notifications of undeliverability from communication providers. If a notice is returned as undeliverable, then the debt collector must not furnish information about the debt to the consumer reporting agency until they satisfy this subsection.
- Per the Rules of the City of New York Section 5-76, a "debt" is defined as follows:
    - "The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."[2]
- As a retailer who services a credit card, consumer obligations arising out of purchases at that retail establishment or at third party locations, a "debt" as defined above is created upon any use of the credit product. The retailer as a service provider to the issuing bank reports a debt to the consumer reporting agencies after the first cycle of account opening. At this juncture, the retailer is not reporting a past due balance but only that there is an open account and a balance on that account. Because a "debt" is simply a consumer obligation versus defined as a past due obligation, the retailer may run afoul of this requirement to send a notice and wait 14 days based on timing of the first cycle of that account. Additionally, even if the retailer was able to send the notice prior to the first report out, if the notice is returned as undeliverable, the retailer would need to manually prevent the account from reporting as open with a balance to the

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[2] N.Y.C. Admin. Section 5-76.

consumer reporting agencies. The amendment states that the notice must be sent "in the medium of communication used to collect the debt," however, there would not be a collection attempt at this point because the debt is not past due which seems to imply that this section is intended to prevent debt parking practices and applicable to accounts that are in a collections experience and past due. For the retailer, at this early stage, the account would be reporting as open with a balance as any line of credit would under these circumstances. Additionally, for those that may have immediately put a cease communications request on their account or whose written notice has been returned as undeliverable, the retailer would be prevented from reporting accurate information to the consumer reporting agency because of its inability to provide the required notice. If the retailer were to have to manually withhold reporting, that could negatively impact a consumer who is attempting to build positive credit history by opening and using a credit card. It also begs the question as to whether the retailer could fully comply with the Fair Credit Reporting Act in reporting with accuracy.

- We strongly urge the DCWP to adopt our proposed definitions of "debt collection procedures" and "debt collector," as suggested below in the "Summary of Comments and Proposed Changes" section of this comment, to take into account the unique nature of a servicer of an obligation that concerns a debt that is not in default at the time when the person or company obtained it or originated the debt and amend this section to only be applicable to negative reporting or debt that is delinquent for more than 61 days.
- Additionally, we propose that the provision concerning undeliverability be removed as the same issues addressed above would arise if the consumer has moved and failed to provide a new accurate address at any point in the timeline. Undeliverability can be an issue that a bank, service provider, or debt collector cannot control and if this a total bar to reporting, the consumer debt may never be reported to the bureau.

Summary of Comments and Proposed Changes

We ask that you reconsider the definitions of "debt collection procedures" and "debt collector" to clearly exempt, in addition to original creditors, those entities that are servicing an account from origination and those situations that concern a debt that was not in default at the time such person obtained it similar to the Fair Debt Collection Practices Act, Regulation F and New York State Law. As discussed above, for a retailer who services an account from origination through debt collection, there is a real risk for a poor and confusing consumer experience as accounts move in and out of a past due status along with a risk of unnecessary hurdles for the retailer who is complying with federal consumer protection laws related to debt collection, monthly periodic statements, consumer reporting, consumer disputes and fraud investigations, etc. We feel that many of these outcomes were not intended and hope that we have been able to shine a light on some of these unintended consequences. With that, we recommend the following edits to the definitions below:

- **Suggested definition text:**
    - Debt collection procedures: "(4) the original creditor has transferred the debt to another person to collect by selling the debt, placing the debt with a debt collection agency, an attorney or law firm. Transfer does not include a debt that is not in default at the time

such person obtained it and the person continues servicing the account after it is in a default status.

- Debt collector: "(D)(6) any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due to another, to the extent such debt collection activity: (a) concerns a debt that such person originated; or (b) concerns a debt that is not in default at the time such person obtained it.

We appreciate the opportunity to comment on the DCWP's proposal to amend the New York City debt collection rules and we encourage the DCWP to move forward with this rulemaking with the suggested changes and edits as provided above. If we can be of any assistance or provide clarification regarding these issues please contact us at (518) 465-3580.

Respectfully submitted,

Kelsey Dorado Bobersky
Director of State and Local Government Relations
Retail Council of New York State

From:	Anita Manghisi
To:	rulecomments (DCWP)
Subject:	[EXTERNAL] RE Comments on Debt Collection Proposed Rule Ammendments-By Anita Manghisi
Date:	Monday, June 9, 2025 6:43:23 PM
Attachments:	image005.png written comments on proposed rules-anita manghisi 061025.doc

Dear Sir/Madam

Attached are written comments I would like the agency to consider before finalizing any rule regarding their proposed rules for the debt collection industry that are set to go into effect October of 2025

I would also invite the agency to comment me to discuss the impact of these rules to both consumers and agency owners alike.

Thank you in advance for your time and consideration

Sincerely,

Anita Manghisi, IFCCE
NYSCA-Board of Director
President-Independent Recovery Resources, Inc.
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Patchogue NY 11772
[redacted]
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June 10, 2025

Dear Respective Agency Member,

Allow me to introduce myself. My name is Anita Manghisi IFCCE, President of Independent Recovery Resources Inc. I have been in the debt collection industry for 30 years. I am a NYC Certified Women Owed Small Business. I serve on the board of directors for the New York State Collectors Association, and I am a Member of ACA International Association of Credit and Collection Professionals.

I will be speaking at tomorrow's hearing but wanted to submit these written comments as well. Tomorrow I will only be focusing on one area of concern due to time limitations.

I'd like to first state that DCWP and the ARM industry share the same goal, to protect consumers. However, these proposed rules will ultimately harm the consumer as they are overly burdensome and restrictive to the industry. Basic economics dictate that the costs to comply to these rules will ultimately be passed onto the consumer in the form of increased cost of services, less available credit (if any at all) and higher interest rates not to mention the stress and aggravation of a potential lawsuit, which would harm the consumer most

In reviewing these proposed amendments, the following areas are most problematic to me:

First Topic: Record Retention Requirements: Overall the record retention requirements of the DCWP are extremely over burdensome, challenging and some are simply not possible due to logistics and technology. My specific areas of concern are as follows:

§2-193 (a) (1) RECORDS TO BE MAINTAINED BY DEBT COLLECTION AGNECY (pg. 4 of 32 I believe)

The proposed language states: "a copy of all communications and attempted communications with the consumer".

"Attempted communication" must be defined with precision. If communication is initiated but fails, what purpose does logging that information serves Please note that the Consumer Financial Protection Bureau (CFPB) has no such requirement. Therefore, I suggest that the phrase "attempted communications" be deleted from the section.

§2-193 (B) (2) RECORDS TO BE MAINTAINED BY DEBT COLLECTION AGNECY (pg. 5 of 32 I believe)

The proposed language states:
"*Recordings of all oral communications, including limited content messages*,"

The CFPB has made it clear that an LMC IS NOT communication.

This requirement is challenging from a technological perspective. Most agencies use a predictive dialing device that does not have the capability to record answer machine messages only live communication. If we can't comply, no message will be left resulting in additional attempts to contact the consumer. This problem, along with overly restrictive frequency attempts, will force creditors to turn to litigation sooner and more frequently.

Additionally, about 85% of our attempts made a day are answering machine messages (LMC) in order to store those for the 3 year requirement would be astronomic in storage costs to the average to mid-size agency.

I suggest the agency follow the CFPB's definition of LMC and exclude this requirement.

§2-193 (a) (6) (iii) RECORDS TO BE MAINTAINED BY DEBT COLLECTION AGNECY (pg. 4 of 32 I believe)

The Proposed language states: "*the names and contact information of the persons involved in* the *communication; and*

> (iv*) a contemporaneous summary in plain language of this communication or attempted communication. <u>For purposes of this subdivision, contemporaneous means a reasonably proximate time from when the communication occurred or close in time to the occurrence."</u>*

This requirement is unrealistic. Many times, in our attempt to communicate with a consumer we do not know whom we are speaking with, not due to our fault, but rather the unwillingness to disclose this information from whom we are communicating with. Additionally, the requirement in (iv) is prohibited as many agency owners use a system of records with pre-coded abbreviated comments. Collectors do not typically hand write notes. This new requirement would be virtually impossible to convert our data and program existing systems to comply.

2-193 (B) (1) RECORDS TO BE MAINTAINED BY DEBT COLLECTION AGNECY (pg. 5 of 32 I believe)

The proposed language states: "*Monthly logs, account nots or other records of consumer complaints, disputes and…."*

This requirement is challenging. What is the definition of a "*complaint*" In the debt collection industry anything could be considered a complaint. The mere fact a consumer is called by a debt collection agency could launch a complaint. That could be hundreds of accounts that are not legitimate complaints from an industry perspective.

This is challenging from a technological approach. Most System of records will only allow one code to classify an account.

I suggest the agency further define what a "complaint" is, how does it differ from a dispute, and which is more relevant to record or log for the agency's benefit.

2-193 (8) (C3) RECORDS TO BE MAINTAINED BY DEBT COLLECTION AGNECY (pg. 6 of 32 I believe)

The proposed language states: "An annual report, in a form made publicly available on the department's website, identifying, by language (1)the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due; and (ii) the number of employees that collected or attempted to collect on such accounts/.

This is unrealistic. Many agencies do not assign a set portfolio or demographic area to focus on. What is the relevancy of this data. I suggest the DCWP remove that data requirement and allow agencies to report by language preference and number of accounts only.

Second Topic: I would like the DCWP to clarify the following definitions:

Section 2. The definitions set forth in section 5-76 of part 6 of subchapter A of chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows: (pg. 9 of 32)

The Proposed language defines: (pg. 9 of 32)
Debt Collection Procedures. (4) "The original creditor has transferred the debt to another person to collect, including but not limited to charging off the debt, selling the debt, or placing the debt with a debt collection agency, an attorney or law firm, or with another department or unit for collection.

Can the agency clarify does this mean what is known in the industry as "first party" debt collection efforts? If an agency is attempting to collect in the original creditor's name, do these rules apply? Do these rules apply if the creditor themselves is attempting to collect on a past due amount? An amount that has not been charged off or considered bad-debt but delinquent?

Language access services: (pg. 9 of 32)
This section is unclear as to what the agency's obligations are if they communicate with a consumer in their preferred language. It is also unclear if the agency is providing "language services" if they choose to communicate with a consumer in their preferred language. Finally, the need to communicate in all mediums is both a liability and added cost to agencies. This may prevent agencies from attempting to communicate to non-speaking English consumers and instead escalate their attempts to collect by litigating.

Third Topic: Call Frequency:
5-77. Unconscionable and Deceptive Trade Practices: (B)(iiiA) (Pg 11 of 32)

This is a direct conflict with the CFPB. I suggest the agency follow the CFPB's allotted 7attempts in 7 days rule. This is extremely prohibited and will cause consumer harm. If we are restricted in all areas of communication attempts to this rule, we will simply escalate the date to litigation more frequently and sooner.

Fourth Topic: Digital Communications
5-77. Unconscionable and Deceptive Trade Practices: (B5) (iA) (Pg 13 of 32)

The Proposed language states: "…*the debt collector obtains revocable consent from the consumer in writing, given directly to such debt collector*, …."

This is a direct conflict of the CFPB and will make it very difficult for us to attempt to communicate with a consumer in their preferred medium. Consumers will not take the time to mail us written consent or to email us. Consumers want the flexibility of allowing verbal consent.

We should have the ability to accept verbal consent. I suggest the DCWP follow the CFPB on this guideline and allow for both verbal and written consent.

Fifth Topic: 5-77. Unconscionable and Deceptive Trade Practices: (B6) (Pg 15 of 32)
The proposed language states: "*Communicate or attempt to communicate with a consumer at the consumer's place of employment including a time the debt collector knows or should know is during the consumer's work hours, ….*"

It is unreasonable to expect a debt collector to know if not specifically told that a customer is working or that we are calling their work phone. The DCWP should remove the expectation of "SHOULD KNOW" and make it clear that the debt collector "KNOWS"

Sixth Topic: 5-77. Unconscionable and Deceptive Trade Practices: (F1) (iv) (Pg 20 of 32)

The proposed language for a NYC consumer to dispute a debt beyond the CFPB's 45-day rule is a direct conflict and causes the industry to be non-compliant with the CFPB. This conflict can cause liability exposure to agencies.

The CFPB's MVN gives a specific date to dispute a debt by. I suggest the DCWP Follow the CFPB's guideline. However, if the agency feels strongly about this additional protection for the consumer, then they must reword the language to avoid exposure of liability to the industry.

The additional notice requirements are too long and will not fit on the back of a standard 8 ½ by 11 pieces of paper. This will add to the cost of mailing and production for agency owners. I suggest you allow for a link for consumers to have access to their rights on the DCWP's website.

Final Topic: Timeline to comply

The timeline to comply is unrealistic. As a small business owner, I cannot spend the time and resources complying with a rule until it is finalized. Small business owners do not have the financial resources, IT administrators, attorneys, or compliance officers. We do it all ourselves. The cost and time to comply with will be extremely challenging and burdensome. Many agency owners will opt NOT to comply and cease doing business in NYC, me included.

DCWP has made many changes throughout its consideration of these rules, each change costs thousands of dollars to implement, and thousands of dollars to undo if DCWP makes additional amendments.

Once a rule is finalized, it will take 3-6 months to come up with a compliance plan, then 6-12 months to implement. We will have to conduct gap assessments, vet out technology and vendors and regardless of OUR timeline we are at the mercy of our vendor partners to onboard us in alignment with what the DCWP demands of us.

Before finalizing the proposed amendments and implementing an October 2025 effective date, it is my hope that DCWP will consider the impact this will have on both the industry and consumers alike. Consumers rely HEAVILY on their credit and the ability to access it. These amendments as is, will certainly have a negative impact on the average consumer's credit and access to it.

I hope that both my oral testimony and written comments will be informative and helpful in considering modifications, clarifications, and ultimately more time to finalize the rule so that industry can review, digest and comply.

Thank you in advance for your consideration and time

Sincerely,

Anita M. Manghisi, IFCCE
President-Independent Recovery Resources, Inc.
Board Member-NYSCA
E: Anita@irrcollect.com
P: 631-758-0900 ext. 210

From:	David Reid
To:	rulecomments (DCWP)
Cc:	Mike Becker; Don Maurice
Subject:	[EXTERNAL] RMAI"s Comments on the Proposed Amendments to DCWP"s Debt Collection Rule
Date:	Tuesday, June 10, 2025 6:28:48 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png image007.png RMAI Letter on DCWP Collections Rule -- 20250610.pdf RMAI Redline of DCWP Debt Collection Rule - Appendix -- 20250610.pdf
Importance:	High

Dear Commissioner Mayuga:

On behalf of Mike Becker, the Executive Director of the Receivables Management Association International (RMAI), please find attached RMAI's comments on the proposed amendments to DCWP's Rule on Debt Collection.

Please do not hesitate to contact us if you or your staff have any questions.

Sincerely,

David Reid

David E. Reid | General Counsel & Senior Director of Government Affairs
Receivables Management Association International

[redacted] | **Web:** www.rmaintl.org
1050 Fulton Avenue, Suite 120, Sacramento, CA 95825

About the Receivables Management Association International (RMAI) – RMAI is a nonprofit trade association that represents the interests of more than 600 businesses within the receivables management industry, including banks, credit unions, nonbank lenders, debt buying companies, collection agencies, law firms, brokers, and industry-related product and service providers. RMAI's Receivables Management Certification Program (RMCP) sets the global standard within the receivables management industry by providing enhanced operational controls and consumer protections through rigorous and uniform industry standards of best practice.

June 10, 2025

RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

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By Electronic Submission to rulecomments@dcwp.nyc.gov

NYC Department of Consumer & Worker Protection
Hon. Vilda Vera Mayuga
42 Broadway
New York, NY 10004

Re: RMAI Comments on Proposed Amendments to DCWP Rules on Debt Collection

Dear Commissioner Mayuga:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the New York City Department of Consumer & Worker Protection (DCWP or Department) related to proposed rulemaking on debt collection as requested in DCWP's invitation for comments issued on April 3, 2025.

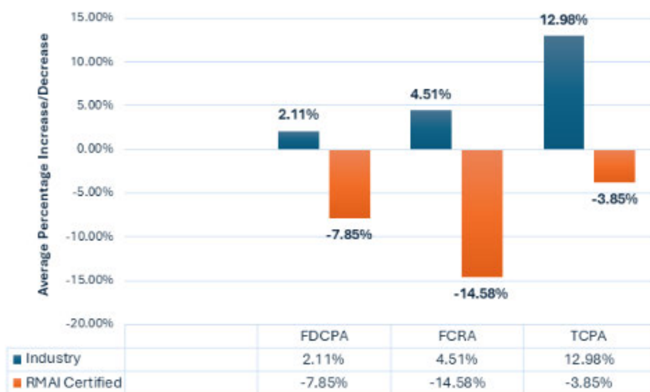
As background, RMAI is a nonprofit trade association that represents the interests of more than 600 businesses within the receivables management industry, including banks, credit unions, nonbank lenders, debt buying companies, collection agencies, law firms, brokers, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP or Certification Program)[1] and its Code of Ethics[2] set the global standard within the receivables management industry by providing enhanced operational controls and consumer protections through rigorous and uniform industry standards of best practice.

Rolled out in 2013, RMAI's Certification Program seeks to go above and beyond the requirements of state and federal law for the protection of consumers.[3] Currently, 523 businesses and individuals hold these internationally respected certifications. Presently, all of the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all U.S. charged-off receivables that have been sold on the secondary market are owned by an RMAI certified business.

[1] Receivables Management Association International, *Receivables Management Certification Program*, version 13.0 (Feb. 20, 2025), publicly available at https://rmaintl.org/GovernanceDocument.
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://rmaintl.org/about-rmai/code-of-ethics/.
[3] RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

A review of the federal Consumer Financial Protection Bureau's (CFPB's) Consumer Response Portal (the Portal) shows that 96.41 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Department started tracking debt collection complaints/inquiries in July 2013. Only 1.54 percent of certified companies have a complaint/inquiry volume of greater than one percent with the remaining 2.05 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

When analyzing the trend of consumer-initiated lawsuits using federal laws[4] with a consumer private right of action that were filed in federal courts in 2023 and comparing it to lawsuits filed in 2024, RMAI Certified Businesses out-performed the industry.



Highlights of the RMAI certification program include a commitment to ongoing education, reoccurring background checks, independent third-party audits, designation of a company Chief Compliance Officer (CCO), and compliance with robust standards including:

- Vendor Management: Ensuring that anyone with access to or contact with consumer accounts adheres to the same criteria as the certified company, including assurance of data security systems/policies.

- Data & Documentation Integrity: Mandating compliance with a comprehensive list of data and documentation requirements that exceeds all state and federal requirements. RMAI certification program maintains unique asset class criteria for auto, credit cards, bankruptcy, installment loans, judgments, medical, and student loan receivables.

- Consumer Disputes: Creating a culture that promotes open lines of communication with consumers to address disputes regardless of the mode of communication the consumer chooses to use. When RMAI's certification standards are viewed in their entirety, they

[4] Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), and Telephone Consumer Protection Act (47 U.S.C. 227 et seq.).

provide a level of consumer protection unseen elsewhere within the receivables industry. The standards include, but are not limited to, requirements that all certified businesses be registered on the CFPB consumer portal, maintain well-defined dispute policies, proactively address issues in credit reports, provide consumers direct access to the CCO, maintain consumer hardship policies, and prohibit the sale or resale of accounts that are currently in dispute or have been identified as fraudulent.

- Portfolio-Sale Standards: Ensuring the integrity of account information and transparency in the sale and resale process is paramount. Standards on chain-of-title, due diligence in the portfolio review, and representations and warranties in the purchase-and-sale agreement combine to ensure the integrity of the account information, thereby providing important consumer protections.

The positive impact on consumer credit from RMAI's certification program has been recognized during the CFPB's development of Regulation F and over the course of nearly a decade and through four administrations. First in its 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) review[5] and again in the 2019 notice of proposed rulemaking,[6] this recognition has helped to reinforce our ongoing efforts within the broader industry. Importantly, as original creditors see the value of the certification program, we are seeing an increase in the number of creditors requiring that their approved vendors be RMAI certified.

RMAI'S Comments on the Proposed Regulation

RMAI's comments on the proposed amendments to the Department's debt collection rule are provided in the margins of the attached redline of the rule to allow ease of understanding while explaining potential solutions. RMAI is happy to provide additional information should DCWP have questions or would like further elaboration. It is important for RMAI to note, that RMAI is a strong advocate of clear and comprehensive regulatory guidance. Our goal in providing the redlines is to provide this needed clarity so that the industry can both understand the requirements and be able to readily comply with the requirements.

Representing a highly regulated industry at both the state and federal level does create challenges for the association as we strive for consistency in requirements, to the degree it is possible. As many RMAI members operate in all 50 states, it becomes difficult to ensure compliance in an environment where states and municipalities adopt widely varying requirements for the same

[5] Consumer Financial Protection Bureau, "Outline of Proposals Under Consideration And Alternatives Considered," (July 28, 2016), fn 85 and 92 available at https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf, archived at https://perma.cc/9JNH-ZDVP

[6] Debt Collection Practices (Regulation F), 84 FR 23274 (May 21, 2019), fn 378, 402, 647, and 743.

activity, especially if it is in conflict with federal laws, such as the Fair Debt Collection Practices Act (FDCPA).

RMAI does recognize that some of the issues the association had previously highlighted as problematic in prior rulemakings related to the debt collection rule were addressed by the Department, which we appreciate.

The following commentary will provide additional information and insights into RMAI's remaining concerns related to the amendments to the debt collection rule:

I. Inconsistency with State and Federal Law

(a) Communications Restrictions

By Phone

We encourage the Department to align the proposed rule with the communications restrictions of Regulation F. There is no data to demonstrate consumers are harmed by the existing communication regulations of Regulation F. To be sure, a review of the CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 570 complaints concerning excessive telephone calls were received from New York State consumers during this 43-month period**.[7] That is the entire state, not just New York City residents. That is an average of 13 complaints a month in a state of 19,867,248 people. Of that amount, approximately one-third of the complaints were made against creditors and not debt collectors. The Department has not provided any data to demonstrate a need for restrictions that we believe make it costly and burdensome to make debt collection telephone calls or for rendering them largely ineffective.

By Electronic Means

The data is even more compelling for electronic communications. The CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 68 complaints concerning frequent or repeated electronic communications were received recorded from New York state consumers. No single month received more than five complaints.**[8] The proposed restrictions on electronic communications are costly and burdensome

[7] CFPB Complaint Database accessed May 10, 2024 at https://www.consumerfinance.gov/data-research/consumer-complaints/search/api/v1/?date_received_max=2025-06-09&date_received_min=2021-11-30&field=all&format=csv&issue=Communication%20tactics%E2%80%A2Frequent%20or%20repeated%20calls&no_aggs=true&product=Debt%20collection&size=570&state=NY

[8] *Id,* at https://www.consumerfinance.gov/data-research/consumer-complaints/search/api/v1/?date_received_max=2025-06-09&date_received_min=2021-11-

and would effectively stifle electronic debt collection communications in New York City. By requiring proactive written consent to contact a consumer by electronic means essentially restricts the industry to operating from archaic and little-used technologies, despite electronic communication being the preferred communication method by consumers.

During Work Hours (regardless of place or method)

The revised text for the first-time anywhere in the nation indicates a debt collector cannot "**communicate** or attempt to communicate with a consumer at a time the debt collector knows or **should know** is **during the consumer's work hours**" (emphasis added). This is an outright prohibition of any debt collection outreach in any form or method during work hours regardless of if the communication is to a home phone, email address, text message, or even a mailed letter. The prior language that was deleted had limited the communication restriction to a person's place of employment but by its deletion would now apply the communication restrictions universally. What's more, it places upon debt collectors an unreasonable knowledge standard that a debt collector "should know" the hours a consumer is working. There is no federal prohibition in communicating with a consumer during work hours, although there is a prohibition on contacting their employer about a debt. The CFPB complaint database revealed that since Regulation F became effective on November 30, 2021, through today, **only 40 complaints have alleged a debt collector called a consumer's employer concerning a debt from New York state consumers. On average, that is less than one complaint a month.**[9] The proposed restrictions on communicating with consumers, even passive communications to non-work locations and devices, during working hours are simply draconian.

In all of these instances, there is no data to show these onerous restrictions on speech are warranted especially when other persons can engage in the exact same speech in the collection of a debt without any similar restrictions such as municipal, state, and utility collections.

On this point, RMAI would also like to highlight a rapidly developing constitutional issue related to restrictions on communications that has developed subsequent to New York City's adoption of collection rulemaking, New York DFS's 2014 rule adoption, and the 2019 public comments to the CFPB's Regulation F.

30&field=all&format=csv&issue=Electronic%20communications%E2%80%A2Frequent%20or%20repeated%20messages&no_aggs=true&product=Debt%20collection&size=68&state=NY

[9] *Id,* at https://www.consumerfinance.gov/data-research/consumer-complaints/search/api/v1/?date_received_max=2025-06-09&date_received_min=2021-11-30&field=all&format=csv&issue=Threatened%20to%20contact%20someone%20or%20share%20information%20improperly%E2%80%A2Contacted%20your%20employer&no_aggs=true&product=Debt%20collection&size=40&state=NY

Overly severe restrictions on the number of communications a debt collector may make to a consumer, similar to those contained in the proposed rule, are unconstitutional.[10]

Typically, restrictions on speech, even commercial speech, that is content based, are subject to strict scrutiny. Under strict scrutiny a court presumes the restriction is unconstitutional and it is the state's burden to demonstrate a compelling state interest that supports the restriction. Here there is none. The commentary provided by the DCWP does not cite any data demonstrating that communications made by debt collectors somehow pose a greater risk of harm than communications made by creditors. Nor does the DCWP provide any data demonstrating that calls made to collect taxes, fines, or penalties owed to the City of New York do not present the same harms the restriction purportedly seeks to product consumers against.[11] However, in the case of debt collectors, existing consumer protections are already in place. *See, e.g.,* 15 U.S.C. §§ 1692c(a), 1692d, 1692d(5).

As noted above, data publicly available from the CFPB, the primary federal regulator of debt collectors, identified that over a 43-month period a statistically insignificant number of debt collection complaints were made concerning excessive telephone calls or electronic communications for the entire state of New York. And these are just complaints, *allegations* of frequent calls and not a finding that the communications themselves were made by a debt collector or made with the *alleged* frequency. DCWP does not provide any supporting evidence which would justify the restriction of speech in support of the proposed rule, presuming such restrictions are legal.

Consequently, there is no compelling state interest to prohibit communications by debt collectors when collecting "consumer" debt. Therefore, the restrictions and prohibitions as they are currently drafted in the proposed rule may be unconstitutional.

(b) Verification of the Debt v. Valid Judgments

The rule provides no deference to a debt that was adjudicated by a court of law. It is commonplace for courts of law to enter judgments on unpaid contractual obligations when a consumer refuses to pay the amount owed. This is often an action of last resort that is taken after months of attempts to get a consumer into a payment plan has failed. The reason why it is the last option creditors attempt is because the cost of litigation is significant. Under the New York Consumer Credit Fairness Act (CCFA), which was enacted in 2021, a uniform list of documents and data elements substantiating the debt must be provided to the consumer and the judge in the

[10] *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335 (2020) and *ACA Int'l v. Healey*, 457 F. Supp. 3d 17, 30 (D. Mass. 2020).

[11] Under 5-76, government officials and employees are excluded from the definition of debt collector if "collecting or attempting to collect any debt owed is in the performance of his or her official duties." After four decades of regulating creditor debt collection, the proposed rule exempts creditors collecting their own debt.

summons and complaint. Many of these elements are the same that the Department is requiring the creditor to provide to the consumer as part of the verification process, despite any judgment previously obtained from a judge of a court of competent jurisdiction. Keep in mind that when a judgment is granted by the court, that judgment stands in place of the debt. While supporting documentation is often maintained by the plaintiff, there is no legal obligation to do so. The rule does grant a "rebuttable presumption" of a judgment if it is mailed, along with any evidence of indebtedness that is part of the court record, but not in the case of a default judgment, even though it is the same evidence that was provided to consumers in a summons and complaint in contested actions. Complicating the matter further would be instances where the judgment was granted by a court outside of New York when the consumer was a resident of another state, prior moving to New York City. This proposed rule could potentially prevent the domestication of foreign judgments. Essentially, if the creditor did everything by the rule of law in another jurisdiction, the Department through the rules could effectively invalidate it. RMAI would simply ask that a valid judgment by a court of competent jurisdiction be able to stand in place of the data and documents required by the Department.

(c) The Proposed Verification Rule Harms Consumer Privacy

Verification under the FDCPA is designed to prevent a debt collector from collecting a debt that has been paid or "dunning the wrong person."[12] Therefore, instead of responding to a verification request by sending sensitive, non-public information to someone who is not the debtor, the FDCPA requires a debt collector to only "confirm the amount of the debt and the identity of the creditor, and relay that information to the consumer."[13] Courts have declined to require that a verification include the disclosure of non-public, personal information especially where the consumer can verify the debt through less sensitive information.[14]

The proposed rule does the opposite. It adopts this approach with no data to suggest that the proposed "document drop" of non-public personal information in response to a simple dispute helps consumers. In fact, our information leads us to believe it facilitates identity theft and the disclosure of sensitive personal information to bad actors.

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[12] *Tardi-Osterhoudt v. McCabe, Weisberg & Conway LLC*, No. 1:18-cv-00840 (BKS/CFH), 2019 U.S. Dist. LEXIS 151988, at *32 (N.D.N.Y. Sep. 6, 2019) citing *Stonehart v. Rosenthal*, No. 01-cv-651, 2001 U.S. Dist. LEXIS 11566, at *23, 2001 WL 910771, at *6 (S.D.N.Y. Aug. 13, 2001) (quoting *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1998)).

[13] *Ritter v. Cohen & Slamowitz, LLP*, 118 F. Supp. 3d 497, 503 (E.D.N.Y. 2015) quoting *Devine v. Terry*, No. 3:13-CV-01023-VLB, 2014 U.S. Dist. LEXIS 138938, at *26 (D. Conn. Sep. 30, 2014).

[14] "A contrary conclusion under these facts would require [the debt collector] to send . . . the true debtor's personal payment information. This information could possibly include such confidential information as the debtor's full social security number, credit score, or credit history. The FDCPA does not require such a result where the alleged debtor, as here, could sufficiently dispute the payment obligation by looking at the last four digits of the true debtor's social security number." *Dunham v. Portfolio Recovery Assocs., LLC*, 663 F.3d 997, 1003-04 (8th Cir. 2011).

If the recipient of a dunning letter disputes a debt (orally or in writing), the proposed rule requires the debt collector to provide a litany of highly personal, non-public information. For example, in response to a simple dispute like "this is not my debt," the proposed rule requires a debt collector to send a signed contract or a signed credit application if either exists. Since most credit cards are originated only with credit applications, a misdirected dunning letter for a credit card debt leads to the disclosure of a credit application containing a trove of personal information such as social security number, bank account information, residence, and employment history.

And, if a signed credit application does not exist for a credit card account, the debt collector is required to send "the most recent monthly statement recording a purchase transaction, payment, or balance transfer." We believe consumers want to keep their credit card purchase history out of the hands of persons who have no business reviewing them.

Dunning letters can end up in the hands of bad actors, after all, there now is a "growing mail theft 'epidemic' plaguing New York City."[15] Besides, disputes with roommates, neighbors and others can lead to mail intercepts.

The proposed rule's reliance on the United States Postal Service to deliver sensitive verification only exacerbates the problem. "From March 1 through September 30, 2020, the Postal Service reported almost 73 million misrouted First-Class letters."[16] We believe delivery of verification to a consumer's known email address should be the first choice and not the hamstrung option proposed.

(d) Definition of Medical Debt

The proposed rule creates confusion concerning "medical debt." Most if not all debt owed to a hospital or health care provider is covered under existing law. The proposed rule would impose additional requirements on what it calls "medical debt."

However, proposed § 5-77(f)(11) imposes additional verification requirements for "medical debt" which "includes debt arising from the receipt of health care services or medical products or devices." Unlike § 5-76, this language focuses on the consumer's use of credit, rather than to whom the debt is owed. A consumer may use an existing home equity loan, credit card or other open-end credit plan to purchase medical goods and services. The debt is not owed to a health

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[15] ABC7 New York, August 16, 2023 available at https://abc7ny.com/nyc-crime-mail-theft-usps-postal-service/13659357/, archived at https://perma.cc/XC3U-42GH ; *see also* 27 Defendants Charged With Crimes Targeting The United States Postal Service, U.S. Attorney's Office, Southern District of New York (Oct. 4, 2023) available at https://www.justice.gov/usao-sdny/pr/27-defendants-charged-federal-crimes-targeting-united-states-postal-service, archived at https://perma.cc/TG4X-AX3U .

[16] Office of Inspector General, United States Postal Service, Audit Report, Misrouted Mail Within the U.S. Postal Service Network, Report Number 20-252-R21 (Feb. 23, 2021) available at https://www.uspsoig.gov/sites/default/files/reports/2023-01/20-252-R21.pdf, archived at https://perma.cc/ME9S-WP8C .

care provider or hospital, rather, it is owed to a bank or non-bank lender. To be sure, when only a portion of an open-end credit product is used for “health care services or medical products or devices,” the proposed rule can be construed to require the debt collector undertake certain activities “in all related medical accounts,” including but not limited to “furnish[ing] to the consumer verification on each related medical debt.”

In the case of a general-purpose credit card or home equity loan debt, the debt collector will not have information available that would disclose the use of the credit facility for “health care services or medical products or devices.” Let’s use as an example a credit card originated in 2010. The consumer has made various purchases and never paid the balance in full. In 2015, the consumer used the credit card to pay $125.00 for a prescription drug at CVS. The card was otherwise used only to purchase electronics and travel. It became delinquent and was placed with a collection agency with an unpaid balance of $5,000.00. It is not likely the consumer or the creditor has account statements from 13 years earlier and even if they did it would show a purchase at “CVS” which could just as well be for beauty supplies.

We request that medical debt is defined as debt owed to a covered entity. We would suggest an appropriate definition would be a definition similar to that adopted by the CFPB during the Biden Administration which would read:

> *“Medical debt” means a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices, or to the person’s agent or assignee, for the provision of medical services, products, or devices. Medical debt includes, but is not limited to, medical bills that are not past due or that have been paid.*

However, if the Department wishes to continue to use the “arising from” language, an alternative definition would be that adopted by Maine and Vermont which is designed to ensure that home equity lines of credit, open lines of credit, and similar products are not accidentally pulled into the definition. This alternative approach reads:

> *"Medical debt" means debt arising from health care services, including dental services, or health care goods, including products, devices, durable medical equipment and prescription drugs. "Medical debt" does not include debt arising from services provided by a veterinarian; debt charged to a credit card unless the credit card is issued under an open-end or closed-end credit plan offered solely for the payment of health care services; debt charged to a home equity or general purpose line of credit; or secured debt.*

II. Operational Timelines

Our members need time to develop and test whatever rule is contained in the final adoption. It cannot be ready on “day one” for several reasons. First, industry does not know the content of any new disclosures and must incorporate them into communications that already contain existing federal and New York state mandatory disclosures. The placement of any new disclosures will impact the printing of written communications.

Second, staff must be trained to ensure compliance with new requirements and testing conducted to verify readiness.

Third, existing recordkeeping technologies must be evaluated to determine whether they satisfy new recordkeeping requirements. In-house information technology staff and outside vendors will be required to evaluate existing technologies and programs to meet the new requirements. In some cases, we believe entirely new technologies will be required to comply with recordkeeping. Testing will be needed to verify the accuracy and integrity of these technologies.

Given the delay in the effective date, ongoing litigation, and DCWP's ongoing revisions to the rule, businesses have had no choice but to wait to operationalize the rule's requirements until they understand what the final requirements will be due to the significant time and financial resources that will be required for implementation. Because this rule substantially alters debt collection practices, some in contradiction of federal and state law, we request an August 1, 2026 effective date. We would highlight that the CFPB, when adopting Regulation F, provided the industry over a year before the rule became effective.

Conclusion

RMAI would like to thank the Department for the opportunity to comment on the proposed amendments to the debt collection rule. With the modifications mentioned in the attached redlines, RMAI would be supportive of the Department's proposed regulations. If you have any questions or require additional clarification, please contact RMAI General Counsel David Reid at dreid@rmaintl.org or (916) 779-2492.

Sincerely,

Michael E. Becker

Mike Becker
Executive Director

Attachment: RMAI Comments -- DCWP Debt Collection Rule 20250609

Proposed Amendments to DCWP Rules on Debt Collection

Section 1. Section 2-193 of subchapter S of chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-193. Records to be Maintained by Debt Collection Agency

(a) Unless otherwise prohibited by federal, state or local law, a debt collection agency must maintain a separate file for each debt that the debt collection agency attempts to collect from each New York City consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer, and by the creditor who originated the debt the agency is seeking to collect. The debt collection agency must maintain in each debt file the following records to document its collection activities with respect to each consumer:

(1) A copy of all communications ~~and attempted communications~~ with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(5) Any other records that are evidence of compliance or noncompliance with subchapter 30 of chapter 2 of title 20 of the Administrative Code and any rule promulgated thereunder, and of part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York.

(6) A monthly log, account notes or record sufficient to identify the total number of all communications ~~and attempted communications~~ by any medium between a debt collection agency and a New York City consumer in connection with the collection of a debt. A communication that results in a busy signal, does not go through, or was made to a wrong number or address that is not affiliated with the consumer or the consumer's family is not required to be maintained in the log. For each communication ~~and attempted communication~~ with the consumer, the log, account notes or record must identify in a manner that is searchable and easily identifiable, the following:

(i) the date~~,~~ and the time ~~and duration (if applicable)~~ of the communication ~~or attempted communication~~;

(ii) the medium of communication ~~or attempted communication~~;

(iii) the names and contact information of the persons involved in the communication; and

Commented [DR1]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated data and content tracking being proposed. No other jurisdiction in the nation has a similar requirement. Requiring this data and content for misdialed numbers, busy signals, unconnected transmissions has no conceivable value nor would it do anything to promote consumer protections. All references to this phraseology have been deleted in this proposed redline.

Commented [DR2]: If the consumer has no ability to know an attempted communication was made because it did not go through or went to a wrong number or address, what would be the purpose of putting it in the log? This language is consistent with exceptions contained in Regulation F.

Commented [DR3]: The word "duration" as this data element does not provide any benefit to the consumer or DCWP. It is data collection for the sake of data collection.

(iv) a contemporaneous summary in plain language of the communication ~~or attempted communication~~. For purposes of this subdivision, contemporaneous means a reasonably proximate time from when the communication occurred or close in time to the occurrence. A recorded conversation does not require a contemporaneous summary to be created.

(b) A debt collection agency must maintain the following records, which must be easily identifiable and be made available to the Department upon notice and request, to document its collection activities with respect to all New York City consumers from whom it seeks to collect a debt:

(1) Monthly logs, account notes, or other records of consumer complaints, disputes and requests to cease further communication, which may be combined into one document or record, or may be kept in a form and format designated by the Commissioner on the Department's website. Such records must include:

(i) all complaints which were received by a debt collection agency that were filed by New York City consumers against the debt collection agency that were sent to the debt collection agency, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name and account information, the source of the complaint, a summary of the consumer's complaint, the debt collection agency's response to the complaint, if any, and the current status of the complaint;

Commented [DR4]: Debt collection agencies need to have received the complaint in order to be compliant with this paragraph. The way it reads right now, if a consumer filed a complaint with a non-profit or governmental entity but that complaint was never forwarded to the collection agency, the agency would be in violation for not maintaining it.

(ii) all written disputes or requests for verification of a debt made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collection agency; and

Commented [DR5]: The industry would respectfully request that disputes and cease and desist requests be in writing for this information to be included in the log. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties.

For example, if a consumer says in response to a request for a payment "yeah right" is that a complaint, dispute, request for verification, or a cease and desist request? Some might say yes and some might say no. Another example, could be when a consumer says "I thought that was paid" but then realizes it was not paid and pays the debt over the phone. Again, some might say "yes" and some might say "no" as to whether it would be applicable.

There tends to be no confusion when it is in writing.

(iii) all written requests to cease further communication made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collection agency after receipt of the request from the consumer.

(2) Recordings of all oral communications, including limited content messages, with all New York City consumers or with a randomly selected sample of at least 5% of all such oral communications made or received by the debt collection agency or a third party on its behalf. The method used for randomly selecting the recorded oral communications must be maintained by the debt collection agency, and a record in each consumer's account must identify the oral communication by date and time recorded, and any third party assigned to handle such oral communication. If a debt collection agency elects to record a randomly selected sample of at least 5% of all oral communications made or received by the debt collection agency, it must maintain a record of the total number of oral communications made or received monthly and the total number of such recorded oral communications. If the debt collection agency owns or has the right to collect on a debt before it refers such a debt to a third party to handle collections oral communications with consumers, the debt collection agency must ensure that:

(i) The third party complies with this section and the licensing rules and laws pertaining to debt collection in the City of New York; and

(ii) The third-party audio recordings are available upon request by the Department to the debt collection agency.

(3) A record of all cases filed in court to collect a debt. Such record must include, for each case filed, the name of the consumer, the identity of the originating creditor, the amount claimed to be due, the index number and the court and county where the case is filed, the date the case was filed, the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and the disposition for each case filed, including whether a judgment was rendered on default or on the merits of the action. Such record must be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(5) A record indicating the language preference of the consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it.

(6) A record indicating which medium(s) of electronic communication are permitted or not permitted by each consumer and, if known, the consumer's preferred medium of communication in connection with the collection of a debt.

(7) A record of information on debt furnished to a consumer reporting agency, including the date the debt collection agency notified the consumer about the debt before furnishing information to the consumer reporting agencies about such debt, and the period of time it waited to receive a notice of undeliverability.

(8) A record of any notice of unverified debt issued in accordance with section 5-77(f)(8) or received by the debt collection agency, including any such notice received from the consumer.

(c) A debt collection agency must maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings, or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or a conviction.

(2) A copy of all training materials, manuals, and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(3) An annual report, in a form made publicly available on the Department's website, identifying, by language, (i) the number of consumer accounts on which an employee collected or attempted to collect a debt owed or due or asserted to be owed or due; and (ii) the number of employees that collected or attempted to collect on such accounts.

(4) A copy of all policies addressing the collection of time-barred debts.

(5) A copy of all policies addressing the verification of debts.

(6) A copy of all policies addressing the furnishing of consumer debt to the consumer reporting agencies.

(7) If collecting medical debt on behalf of a covered medical entity, ~~A~~a copy of all policies related to medical debt, including but not limited to any financial assistance policies addressing hospital financial assistance programs.

(d) The records required to be maintained pursuant to this section must be retained for the following periods of time:

(1) For records required to be maintained pursuant to subdivisions (a) and (b) of this section, excluding recordings of oral communications with consumers, until three years after the date of the debt collection agency's last collection activity on the debt.

(2) For recordings of oral communications with consumers, until three years after the date of the latest oral communication.

(3) For records required to be maintained pursuant to subdivision (c) of this section, until six years after the date the record was created.

Section 2. The definitions set forth in section 5-76 of part 6 of subchapter A of chapter 5 of Title 6 of the Rules of the City of New York are amended to read as follows:

~~**Attempted communication**. The term "attempted communication" means any act to initiate a communication or other contact about a debt with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact about a debt is an attempted communication regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person. A limited-content message is an attempted communication.~~

Clear and conspicuous. The term "clear and conspicuous" means readily understandable. In the case of written and electronic record disclosures, a clear and conspicuous statement, representation, or element being disclosed is of such location, size, color, and contrast to be readily noticeable and legible to consumers. In the case of oral disclosures, a clear and conspicuous disclosure is given at a volume and speed sufficient for a consumer to hear and comprehend it. In any clear and conspicuous disclosure, any required modifications, explanations, or clarifications to other information are presented close to the information being modified, so as to be readily noticed and understood, provided that the disclosures may be on another page. Hyperlinks in electronic communications related to modifications, explanations or clarifications are permitted.

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium, including by electronic means. The term communication excludes a limited-content message.

Covered medical entity. The term "covered medical entity" means a health care entity that is tax-exempt under federal or New York State law or qualifies for distributions from the Indigent Care Pool from the State of New York or any other such fund or distribution allocated to reduce

Commented [DR6]: Many debt collectors do not collect medical debt. If a debt collector does not collect this asset class, they should not be required to maintain policies addressing hospital financial assistance programs.

Commented [DR7]: The industry would request the deletion of the phrase "attempted communications." The DCWP indicated that one of the reasons for proposing amendments to the existing rule is to come into alignment with Regulation F (Reg F) that was promulgated by the federal Consumer Financial Protection Bureau (CFPB) in 2021. There is no similar record keeping requirement in Reg F that requires the recording of attempted communications in a formal log. Systems of record would often have an entry of attempts but not in the complicated data and content tracking being proposed. No other jurisdiction in the nation has a similar requirement. Requiring this data and content for misdialed numbers, busy signals, unconnected transmissions has no conceivable value nor would it do anything to promote consumer protections. All references to this phraseology have been deleted in this proposed redline.

Commented [DR8]: The industry would respectfully request that some reasonable exceptions be permitted. The industry is concerned that certain required disclosures that are required by the federal and state level have already filled up available space on the first page of communications. As such, we can envision a scenario where a clear and conspicuous notice will have to be addressed on another page in the document because to display it on the first page would prevent us from complying with the federal and state requirements for what needs to be on the first page.

the charges of medical services to consumers by granting financial assistance, through a financial assistance policy, to patients based on need or an inability to pay.

Debt collection procedures. The term “debt collection procedures” means any attempt by [a debt collector] any person to collect a debt after any of the following:

(1) with respect to accounts for which creditors are required to send periodic statements, the creditor has ceased sending those statements, or taken or threatened to take legal action against the consumer;

(2) with respect to 30-day accounts for which periodic statements are not required, the creditor has ceased sending bills for the debt or taken or threatened to take legal action against the consumer; [and]

(3) with respect to all other types of credit, the creditor has accelerated the unpaid balance of the debt or demanded the full balance due[.] ; or,

(4) the original creditor has transferred the debt to another person to collect, including but not limited to charging off the debt, selling the debt, or placing the debt with a debt collection agency, an attorney or law firm, or with another department or unit for collection.

Debt collector. The term “debt collector” means any person, including any natural person or organization, including a debt collection agency, who:

(A) is engaged in any business the principal purpose of which is the collection of any debts, or [who]

(B) after the initiation of debt collection procedures, regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person, or debts owed or due or asserted to be owed or due to the person collecting or attempting to collect the debts.

[Notwithstanding the exceptions contained in this section, debt collector]

(C) The term also includes a buyer of debts who seeks to collect on such debts either directly or indirectly, as well as any creditor that, at any time, in collecting its own debts, uses any name other than its own that would suggest or indicate that someone other than such creditor is collecting or attempting to collect such debts.

(D) The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of their official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part; ~~or~~

(5) any person performing the activity of serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt, or serving, filing or conveying formal legal pleadings, discovery requests, judgments, or other documents pursuant to the applicable rules of civil procedure, where such person is not a party, or providing legal representation to a party, to the action~~.~~;

(6) any communication, letters, pleadings, or other correspondence that are delivered by an attorney licensed within the State of New York while performing their duties as an officer of the court during the pendency of an active court matter that is overseen and supervised by the New York State Unified Court System; or

(7) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

Commented [DR9]: The industry requests a limited carve out for attorneys to permit licensed attorneys the ability to practice law without creating potential conflicts with the proposed regulations. Please see the New York State Creditors Bar Associations memo for additional explanation.

Commented [DR10]: This is intended to mitigate the risk that employees of the original creditor could be exposed personally under the current definition.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Electronic communication. The term "electronic communication" means communication by electronic means including, but not limited to, electronic mail, a text message, or instant message, rather than oral communication in person or by telephone, or hard copy communication by U.S. mail or other delivery service.

Electronic record. The term "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

Financial assistance policy. The term "financial assistance policy" means a program to reduce or eliminate charges for medical goods or services established by a nonprofit hospital or health care provider.

Itemization reference date. The term "itemization reference date" means any one of the following dates: (1) on revolving or open-end credit accounts, the charge-off date of the debt, or (2) on [closed-end] accounts other than revolving or open-end credit accounts, either the date of the last payment, if such date is available, or the charge-off date of the debt, or (3) on accounts that lack a charge-off date, the date of the most recent transaction that gave rise to the debt.

Language access services. The term "language access services" means any service made available by a debt collector to consumers in a language other than English. Language access services include, but are not limited to, the use of:

(1) collection letters using a language other than English;

(2) customer service representatives who collect or attempt to collect debt in a language

other than English;

(3) a translation service for the collector's website or for written communications; and

(4) a service that interprets phone conversations in real-time.

Limited-content message. The term "limited-content message" means an attempt to communicate with a consumer by leaving a voicemail message that includes all of the following content, which may include other content allowed by federal law, and that includes no other content:

(1) A business name for the debt collector that does not indicate that the debt collector is in the debt collection business;

(2) A request that the consumer reply to the message;

(3) The name of the natural person whom the consumer can contact to reply to the debt collector; and

(4) A call-back telephone number that is answered by a natural person during regular business hours. The call-back telephone number shall be a number for a telephone for which a call to that number shall be either (a) answered by a natural person qualified to address consumer inquiries concerning communications the debt collector has with consumers or (b) routed to such a natural person within 60 seconds after the call is linked to the debt collector's telephone line for such number and that shall be answered by such natural person within 60 seconds after the call is routed.

Original creditor and originating creditor. The terms "original creditor" or "originating creditor" means the financial institution that owned the consumer credit account at the time the account was charged off, even if that financial institution did not originate the account. ~~any person, firm, corporation, or organization who originated the debt, including by extending credit and creating the debt.~~

Pre-charge-off period. The term "pre-charge-off period" means the period of time commencing with either (a) the date of the last periodic statement, written account statement, or invoice, which was provided to the consumer by a creditor before the institution of debt collection procedures, or (b) the date the last payment was applied to the debt, and ending with the date the debt was charged off.

Section 3. Section 5-77 of part 6 of subchapter A of chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

[It] After the initiation of debt collection procedures, it is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) ***Acquisition of location information***. Any debt collector communicating with any person other than the New York City consumer for the purpose of acquiring location information about the consumer in order to collect a debt must:

Commented [DR11]: This language comes from 6 RCNY 2-194 which applies only to *licensed debt collection agencies*. Since not all debt collectors are licensed debt collection agencies, it should be incorporated here.

Commented [DR12]: The industry would request that the definition of "original creditor" that both DFS and DCWP use is the definition adopted in state law in CPLR 105(q-1) in 2021.

(1) identify themselves, state that they are confirming or correcting location information about the consumer and identify the debt collector on whose behalf they are communicating when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information, in which case the debt collector may communicate one additional time; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail, an undelivered email message, or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the name of the debt collector and a request that the person sought telephone the debt collector;

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the U.S. mail or [a] other delivery service that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use their business name or the name of a department within their organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that the attorney is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

(b) ***Communication in connection with debt collection***. Unless state or federal law prohibits compliance with this section, a debt collector is presumed to have complied with this rule, in connection with the collection of a debt, ~~must~~ if the debt collector does not:

(1) Without the prior written or orally recorded consent of the New York City consumer, given directly to the debt collector, or permission of a court of competent jurisdiction, engage in any of the following conduct:

(i) communicate or attempt to communicate with the consumer at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector [shall assume that the convenient time for communicating] may only communicate or [attempting] attempt to communicate with a consumer [is] after 8 a.m. and before 9 p.m. Eastern [Standard] Time;

Commented [DR13]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

(ii) except for any communication that is required by law, communicate or attempt to communicate directly with the consumer if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(iii) communicate or attempt to communicate, including by leaving limited-content messages, with the consumer with excessive frequency.

(A) In the absence of knowledge of circumstances to the contrary, a debt collector is presumed to have complied with subsection (iii) if it has communicated with the consumer no more than three times during a seven-consecutive-calendar-day period. In calculating such communications, a debt collector shall include ~~Excessive frequency means~~ any communication ~~or attempted communication~~, except communications ~~or attempted communications~~ set forth in item (E) of this subparagraph, made by the debt collector to a consumer by any medium of communication, in connection with the collection of debt within ~~a~~ such seven-consecutive-calendar-day period, either 1) more than three times in total during such period per consumer or 2) any time after the consumer responded to a prior communication within such period. Subject to the exclusions set forth in item (E) of this subparagraph, it is a rebuttable presumption that a debt collector has violated subsection (iii) if the debt collector has communicated with a consumer more than three times during a seven-consecutive-calendar-day period. The debt collector may rebut this presumption by demonstrating that the communications were not made with the intent to harass the consumer or for abusive purposes.

Commented [DR14]: The proposed rule would prohibit speech by making it unlawful to communicate more than three times within the seven-consecutive-calendar-day period. Our proposal makes three in seven a presumption of compliance. It also makes it a rebuttable presumption of non-compliance if the debt collector communicated more than three times in even-consecutive-calendar-day period.

Not all communications from a debt collector to the consumer in excess of three are unwanted. This proposal permits the debt collector to rebut a presumed violative communication by demonstrating that the communication was not made with the intent to harass or for an abusive purpose. It avoids the unconstitutional speech restriction of the proposed rule.

(B) Where a debt collector is attempting to collect on multiple debts [for] from the same consumer [for separate] on behalf of non-affiliated creditors, excessive frequency shall be calculated separately for each non-affiliated creditor.

(C) Where a debt collector is ~~an original creditor~~ attempting to collect in its own name on multiple debts for the same consumer, excessive frequency shall be calculated separately for each distinct account belonging to the consumer.

(D) [The date of the first conversation or attempted communication is the first day of such a seven-consecutive-calendar-day period] The seven-day consecutive calendar-day period shall start on the date of the first communication ~~or attempted communication~~ including limited content-messages.

(E) The following communications ~~or attempted communications~~ shall not be included in the calculation of excessive frequency:

(I) any communication ~~or attempted communication~~ between a consumer and the debt collector that is a hard copy communication sent by U.S. mail or other delivery service;

(II) any [Communication] communication ~~or attempted communication~~ between a consumer and the debt collector that is initiated by [or at the request of a] the consumer;

(III) any initial communication ~~or attempted communication~~ between a consumer and the debt collector that is in response to a request for communication from the consumer or an initial communication in response to a communication from the consumer in the same email thread [or];

(IV) any communication ~~or attempted communication~~ between a consumer and the debt collector that is in response to a communication from the consumer in the same live chat; [not connected]

(V) any attempted communication between a consumer and the debt collector that is undeliverable, such as a bounced email, or failure to connect to the dialed number [, returned mail, or a bounced email; or required by law shall not be included in the calculation of excessively frequent communications.] ;

(VI) one initial communication ~~or attempted communication~~ made for the sole purpose of obtaining revocable consent to communicate with the consumer by an electronic medium pursuant to subparagraph (i) of paragraph (5) of this subdivision;

(VII) any communication ~~or attempted communication~~ required by state or federal law that is unrelated to the collection of debt;

(VIII) [(D) Any] any communication ~~or attempted communication~~ made by a person pursuant to the rules of civil procedure, such as serving, filing, or conveying formal legal pleadings, discovery requests, depositions, court conferences, communications with the consumer's attorney on a pending legal matter, or ordered by the New York State Unified Court System, [shall not be included in the calculation of excessively frequent communications.] ; and

(IX) where a debt collector is an original creditor, any communication ~~or attempted communication~~ in the ordinary course of the creditor's business unrelated to debt collection practices.

For the purpose of this paragraph [(b)(1) of this section], the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, or spouse (unless the debt collector knows or should know that the consumer is legally separated from or no longer living with their spouse).

(2) Except if otherwise permitted by law, communicate about a debt with any person other than the consumer who is obligated or allegedly obligated to pay the debt, the consumer's attorney, a consumer reporting agency, the creditor, the attorney of the creditor, a debt collector to whom the debt has been assigned for collection or the attorney of that debt collector without the prior written or orally recorded consent of the consumer or their attorney given directly to the debt collector, or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy.

(3) Communicate with any person other than those persons enumerated in paragraph (2) of this subdivision in a manner which would violate any provision of paragraph (1) of this subdivision if such person were a consumer.

(4) Communicate or attempt to communicate with a consumer with respect to a debt if the consumer has notified the debt collector in writing or the debt collector has an orally recorded conversation that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except for any communication which is required by law. The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request. The debt collector may, however:

Commented [DR15]: An orally recorded conversation where the consumer grants consent should hold the same level of integrity and legitimacy as a written document.

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

Commented [DR16]: While a written document would be clearer and remove any ambiguity that may come through an oral conversation, an orally recorded conversation would at least provide the opportunity to review the conversation to discern intent.

Phone calls could involve vague language such as "I really don't like getting these calls." Does that count? What if they say "stop calling me" to start the conversation but then agrees to set up a payment plan?

The proposed rule seems to have contradictory provisions as consumer instructions provided over the phone are permitted in some circumstances while prohibited in other places?

(i) communicate with the consumer once in writing including by electronic means:

(A) to advise the consumer that the debt collector's further efforts are being terminated; or

(B) to the extent such notice was not previously provided, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy, if it is a remedy they are legally entitled to invoke and intend to invoke it; and

(ii) respond to each subsequent communication from the consumer.

(5) Contact a New York City consumer by electronic communication to collect or attempt to collect debt unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if such electronic communication is private and direct to the consumer and [either] one of the following requirements is met:

(A) the debt collector only sends one electronic communication in a seven day period unless the debt collector obtains revocable consent from the consumer in writing, given directly to [the] such debt collector, to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific debt more frequently, and the consumer has not since revoked the consent, provided that a debt collector may correspond with a consumer through electronic communications after receiving oral consent from the consumer solely to satisfy the requirements of this paragraph and to obtain written consent, but the debt collector may not collect or attempt to collect debt by electronic communications in excess of one electronic communication in a seven day period until the requirements in this paragraph are satisfied; [or]

(B) the debt collector is the original creditor and obtained consent from the consumer, given directly to the debt collector, to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account prior to the institution of debt collection procedures, and the consumer has not since revoked such consent, provided that, after the institution of debt collection procedures, such debt collector informs such consumer in writing of their right to revoke such consent to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account; or

(C) the consumer used such email address, text message number, social media account, or another electronic medium of communication to communicate with the debt collector about a debt within the past 60 days and the consumer has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written consent is retained by the debt collector until the debt is discharged, sold, or transferred.

Commented [DR17]: The industry respectfully believes DCWP is not accurately reflecting the desire of the public with this provision. Our members indicate that that consumers want to use e-communication as the norm, not the exception (this has also been found to be true in consumer studies as well). This shift occurred probably 5-7 years ago.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(v) The debt collector must include in every electronic communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communications at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by replying "stop" or by using an "unsubscribe" hyperlink; provided that, the debt collector must also accept any other word(s) sent in a response by a consumer that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's opt-out request in the same language as in the initial electronic communication that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer pay any fee to opt-out or provide any information other than the consumer's opt-out preferences and the email address, [or] text message number, social media account, or other electronic medium subject to the opt-out request.

(vii) Consent to communicate electronically under this paragraph shall not relieve a debt collector of any other requirement in this section to send a communication in a specific form or format, including but not limited to sending a written validation notice by U.S. mail or other delivery service pursuant to paragraph (1) of subdivision (f) of this section .

(6) Communicate or attempt to communicate with a consumer at the consumer's place of employment or during ~~[the consumer's place of employment, including]~~ a time the debt collector knows ~~or should know~~ is during the consumer's work hours if they operate from home, or by sending an electronic message to an email address or a text message or call to a phone number, that the debt collector knows or should know is provided to the consumer by the consumer's employer. Notwithstanding the foregoing, such communication is permissible where the consumer provided prior written revocable consent to the debt collector to use a direct number [at the consumer's place of employment] provided by the consumer's employer as the consumer's preferred method of contact for the debt and the consumer has not otherwise revoked such consent and such communication does not violate any other provision of local, state or federal law.

(7) Communicate or attempt to communicate with a consumer on a social media platform, unless the debt collector obtains consent from the consumer to communicate about the debt on the specific social media platform and the communication is not viewable by anyone else other than the consumer, including but not limited to the general public or the consumer's social media contacts.

(8) Communicate or attempt to communicate with a consumer through a medium that the consumer has requested that the debt collector not use to communicate with the consumer.

(9) Communicate or attempt to communicate with a consumer to collect a debt for which the debt collector knows or should know that the consumer was issued a Notice of Unverified Debt pursuant to paragraph [(f)](8) of subdivision (f) of this section, unless a subsequent debt collector verifies the debt prior to such communication in accordance with paragraph [(f)](7) of

Commented [DR18]: This text would prohibit any communications during work hours, even to the home address or a personal email. We respectfully request the language be reverted to specify a "consumer's place of employment."

subdivision (f) of this section, but no sooner than 30 days from the date the consumer receives verification of the debt.

(c) ***Harassment or abuse***. A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring ~~or produce another sound or alert~~, or engaging any person by any communication medium, including but not limited to telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person contacted by the debt collector;

Commented [DR19]: Cell phones that get emails can be set up to produce a sound even though that was not the intent of the debt collector. There is also an evidentiary problem in that it is easy to prove when a debt collector made a phone call or sent a message but almost impossible to prove whether that communication actually caused a phone to "produce an alert or other sound." This addition makes no sense because only the consumer can control whether or not the phone produces an alert or other sound.

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC § 1681a(f) or 15 USC § 1681b(3); or

(6) except where expressly permitted by federal, state, or local law, communicating with a consumer without disclosing the debt collector's identity.

(d) ***False or misleading representations***. A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or identification thereof;

(2) the false representation or implication that any individual is an attorney or is employed by a law office or a legal department or unit, or any communication is from an attorney, a law office or a legal department or unit, or that an attorney conducted a meaningful review of the consumer's debt account;

(3) the representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

(ii) become subject to any practice prohibited by this part;

(6) the false representation or implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;

(7) the false representation or implication that accounts have been turned over to innocent purchasers for value;

(8) the false representation or implication that documents are legal process;

(9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;

(10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f);

(11) the use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;

(12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;

(14) the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(15) except for limited-content messages and where otherwise expressly permitted by federal, state, or local law, the failure to disclose clearly and conspicuously in all communications, in the same language used by the debt collector to collect the debt, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;

(16) the use of any assumed name; provided that an individual debt collector may use an assumed name when communicating or attempting to communicate with a consumer about a debt if that collector uses the assumed name consistently and is the only person using that assumed name, and the assumed name is on file so that the true identity of the collector can be ascertained;

(17) any conduct proscribed by New York General Business Law §§ 601(1), (3), (5), (7), (8), or (9);

(18) the false, inaccurate, or partial translation of any communication;

(19) [after the institution of debt collection procedures,] the false representation or omission of a consumer's language preference when returning, selling or referring for debt collection litigation any consumer account, where the debt collector knows or should know of such preference;

(20) except where expressly permitted by federal, state, or local law, the failure to clearly and conspicuously disclose, before any attempt to collect a debt, that the communication is being recorded and the recording may be used in connection with the collection of the debt; or

(21) [after the institution of debt collection procedures,] the false representation that the consumer cannot dispute the debt or request verification of the debt from the debt collector by oral communication or by any medium of communication used by the debt collector to collect debt.

(e) ***Unfair and unconscionable practices***. A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

(1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and text message or mobile phone data fees;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by U.S. mail or [a] other delivery service, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use their business name or the name of a department within their organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, except where expressly permitted by federal, state, or local law, communicating with a New York City consumer without disclosing the debt collector's name;

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment;

(8) engaging in any conduct prohibited by New York General Business Law §§ 601(2) or (4);

(9) after institution of debt collection procedures, collecting or attempting to collect a debt without recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it;

(10) furnishing to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), information about a debt unless the debt collector has sent to the consumer in the medium of communication used to collect the debt, and sent a written copy to the consumer via U.S. mail or other delivery service, a [validation] notice [pursuant to section 5-77(f)] that states, clearly and conspicuously, that the information about the debt ~~will~~ may be reported to a consumer reporting agency and has waited 14 consecutive days after sending such notice. During the waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during the waiting period, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector satisfies this paragraph.

Commented [DR20]: "Will" is misleading to the consumer, and conflicts with other federal and state disclosures that state that debt "may" be credit reported.

This paragraph (e)(10) does not apply to a debt collector's furnishing of information about a debt to a nationwide specialty credit reporting agency that compiles and maintains information on a consumer's check writing history, as described in section 603(x)(3) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(x)(3));

(11) selling, transferring, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt where the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy, except a debt collector may transfer a debt to the debt's owner or to a previous owner of the debt if:

(i) the transfer is authorized under the terms of the original contract between the debt collector and the debt's owner or previous owner, as a result of a merger, acquisition, purchase and assumption transaction, or as a transfer of substantially all of the debt collector's assets; and

(ii) the debt collector also transfers all information pertaining to whether the debt has been paid or settled or discharged in bankruptcy obtained during the time the debt was assigned to the debt collector for collection;

(12) selling, transferring, returning to the debt's owner or creditor, or placing for collection or with an attorney or law firm to recover any debt where the debt collector knows or should know that the time to sue on the debt has expired, without including a clear and conspicuous notice, as required under paragraph (2) of subdivision (i) of this section, to the recipient of the debt that

the statute of limitations on such debt has expired and that federal law prohibits suing on the [expired] time-barred debt; or

(13) selling, transferring, returning to the debt's owner or creditor, or placing for collection or with an attorney or law firm to sue a New York City consumer to recover any debt for which the debt collector was unable to provide written verification of the debt, despite having received a first dispute or first request for verification of the debt from the consumer, without including a clear and conspicuous notice to the recipient of the debt that the debt was not verified despite receiving a first dispute or first request for verification from the consumer, and a copy of the "Notice of Unverified Debt" sent to the consumer pursuant to paragraph (f)(8) of this section.

(f) ***Validation of debts.*** Debt collectors, except debt collectors that are required to comply with 15 U.S.C. § 1666 (Fair Credit Billing Act) and who provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1666 and regulations promulgated thereunder, must comply with the following requirements regarding validation of debts:

(1) *Validation notice.* Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector must send the consumer a written notice containing any and all information required by federal and state law, as well as the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in an initial written communication sent by U.S. mail ~~or~~ other delivery service, by electronic means consistent with 12 CFR Part 1006.34, or if the initial communication with the consumer occurred before [December 1, 2024] ~~October 1, 2025~~August 1, 2026 and a validation notice was already sent to such consumer:

(i) the New York City Department of Consumer and Worker Protection license number assigned to the debt collection agency, if applicable;

(ii) the name of the natural person for the consumer to contact;

(iii) the telephone number that is answered by a natural person during all times when a debt collector conducts business with consumers;

(iv) the following statement:

PLEASE READ: Information About Your Rights as a New York City Consumer

• **There is no time limit for a New York City consumer to dispute the debt in collection under New York City law**. You can let collectors know you dispute the debt using any of the ways they contact you, including by phone.

• **You must get a response to the disputed debt in [45] 60 days**. Once you dispute the debt, the collector must stop collection. Within [45] 60 days after receiving your dispute, a debt collector must give you either 1) verification of the debt, or 2) a "Notice of Unverified Debt" stating it can't verify the debt or continue collection. Be sure to keep a copy of all letters.

• **Inform the debt collector if any charges arise from medical debt**. If you have a low or limited income, you may be eligible to apply for help under [the] a hospital's "Financial Assistance Policy." Medical debt cannot be reported on your credit report. ***Note**: Medical debt*

Commented [DR21]: Regulation F provides detailed requirements for communicating a validation notice via electronic means. These provisions should align with federal law.

Commented [DR22]: The industry requests an effective date 12 months from the adoption of these rules. The CFPB also provided 12 months when they adopted Regulation F. These rules are far more complicated and detailed than Regulation F and will require a significant amount of operational changes.

Given the delay in the effective date, ongoing litigation, and DCWP's announced revisions, businesses have waited to understand what the final requirements will be before spending time and resources on what might be the final rule.

does not include charges to a credit card unless the credit card is offered specifically for the payment of health care services, products, or devices.

(v) a statement informing the consumer of any language access services available;

(vi) a statement that a Glossary of Common Debt Collection Terms and other resources are available in different languages at www.nyc.gov/dcwp.

The information required under [subdivisions] subparagraphs (i) through (vi) may be included on the reverse side of a written validation notice only if the debt collector includes them together under a heading entitled, "**Important Additional Consumer Rights Under New York City Law**" and includes a clear and conspicuous statement on the front of the validation notice referring to the disclosures on the reverse side. If included on the reverse side of the validation notice, the information must be positioned in a manner so it is readily noticeable and legible to consumers even after a consumer tears off any response portion of the notice.

(vii) The date of the validation notice.

(viii) Itemization of the debt. Together with the items required under federal or New York State law, a debt collector must provide the following information in the itemization of the debt to New York City consumers:

(A) A numerical value for all fields as of the itemization reference date, even if no additional amounts have accrued.

(B) On accounts that are not credit card accounts or revolving lines of credit, if ~~If~~ the amount asserted to be owed by the consumer changed during the pre-charge-off period, the debt collector must add a line for the amount of the debt as of the date of the last written notification sent to the consumer on or before the institution of debt collection procedures, except if this information is not available to the debt collector at the time of the itemization.

(C) If any amount has been assessed or applied by the debt collector to the amount of the debt after the institution of debt collection procedures or after a judgment, the debt collector must include fields listing the basis of the consumer's obligation to pay any interest (including rates applied), cost or fee, and if such amount was added by the debt collector based on the consumer's agreement with the creditor or as allowed by law.

(ix) Time-barred debt. If a debt collector seeks to collect on a debt for which the debt collector knows or has reason to know that the statute of limitations for a debt has expired, the debt collector must include a statement that clearly and conspicuously discloses to the consumer substantially the same time-barred debt disclosure as the disclosure contained in paragraph (2) of subdivision (i) of this section and meeting the requirements of paragraph (5) of such subdivision.

In general. Debt collection agencies that must comply with section 20-493.2(a) of the Administrative Code and section 2-190(b) of subchapter S shall be deemed to satisfy the requirement of furnishing an itemization of the debt under the licensing law by complying in accordance with [section 5-77(f)(1)(viii)] subparagraph (viii) of this paragraph and paragraph (11) of this subdivision.

Commented [DR23]: Debt collectors are already required to provide specific notices related to verification by both the federal government and the State of New York. The notice being suggested in this paragraph is different from both the federal and state notice requirements. This is thoroughly going to confuse the consumer. It should also be noted that this notice conflicts with the federal safe harbor provision.

Commented [DR24]: For credit card and revolving accounts, the requirement needs to remain the standard required under federal banking law – the universal date used by all creditors is the charge-off date. This is because under the "debt collection procedures," the charge off statement is the triggering event. We see no reason to include the amount contained in the statement immediately preceding the charge off statement. The inclusion of this line item would confuse consumers because if a consumer would add together all the line items, the result is an amount larger than what is owed. Some consumers may be confused if a payment or credit was made between the charge off statement and the preceding statement such that the preceding statement balance is higher than the charge off balance.

(2) *Delivery of validation notice.* A debt collector [must deliver written disclosures] required to send a validation notice under paragraph [(f)](1) of this [section] subdivision, must deliver such written disclosures in the following manner*:*

(i) By U.S. mail or other delivery service. If a debt collector only delivers a validation notice electronically or orally, it does not satisfy the requirement under this paragraph and paragraph (f)(1) of this section.

(ii) [As a duplicate] A copy of the validation notice [and itemization of the debt] may be sent by any other means, including electronic mail, provided it is in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E–SIGN Act)(15 U.S.C. § 7001(c)) or their successor provisions[.] , and

[(iii) As a duplicate copy electronically, if it is in accordance] with [section 5-77(b)(5) paragraph (5) of subdivision (b) of this section. [and the notice] Where a copy of the validation notice is attached to an electronic communication, the body of such communication must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request originating-creditor information electronically.

(3) *Notices in languages other than English.* A debt collector must do the following regarding collecting or attempting to collect debt from New York City consumers in a language other than English:

(i) If a debt collector offers consumers validation notices in a language other than English, and a consumer [request] requests a notice in such language, the debt collector must mail a written notice to the consumer completely and accurately in the language requested within 30 days of receiving such a request. As required by section 1006.34(e)(2) of title 12 of the Code of Federal Regulations, a debt collector who receives a request from the consumer for a Spanish-language validation notice must provide the consumer with a validation notice completely and accurately translated into Spanish.

(ii) In addition to the requirements [in] of paragraph [(f)](1) of this [section] subdivision, a debt collector may not contact a consumer in a language other than English to collect debt without providing the consumer, by U.S. mail or other delivery service, a validation notice written accurately in the language used by the debt collector during the exchange with the consumer, within five days of the first contact by the debt collector in the language other than English. A debt collector is not required to mail the validation notice in a language other than English to the consumer more than once during the period that the debt collector owns or has the right to collect the debt.

(iii) If the debt collector sends a validation notice in a language other than English, it must also accept and respond to disputes, complaints, requests for verification of the debt, requests to cease further communication, and other communications by the consumer completely and accurately in the same language as the validation notice.

(4) *Validation Period.* The validation period extends for [at least] 30 consecutive days from the date a consumer receives or is assumed to receive a validation notice. For purposes of determining the validation period, the debt collector may assume that a consumer received the validation notice five business days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it.

(5) *Overshadowing of rights to dispute or request original-creditor information*. During the validation period, a debt collector must not engage in any collection activities or communications that overshadow or are inconsistent with the disclosure of the consumer's rights to dispute the debt and request the name and address of the original creditor.

(6) *Disputes and requests for verification of debt*. A New York City consumer may dispute or request a verification of the debt orally, in writing, or electronically (if the debt collector uses electronic communications to collect debt) at any time during the period in which the debt collector owns or has the right to collect the debt. [The] For accounts where a validation notice is required to be sent pursuant to paragraph (1) of this subdivision on or after ~~October 1, 2025~~August 1, 2026, excluding those accounts purchased before ~~October 1, 2025~~August 1, 2026, a debt collector must cease collection on such disputed debt after receiving the first dispute or the first request for verification by a consumer, unless and until the consumer receives [timely] verification of the debt in accordance with paragraph [(f)](7) of this [section] subdivision. If a debt collector provides consumers the ability to submit disputes or requests for verification electronically through a website, such website must automatically generate a copy of each written dispute or request for verification that a consumer can print, save, or have emailed to them. A consumer shall not be required to waive any rights to make use of such an online submission option.

(7) *Verification of debt*. [A] For accounts where a validation notice is required to be sent pursuant to paragraph (1) of this subdivision on or after ~~October 1, 2025~~August 1, 2026, excluding those accounts purchased before ~~October 1, 2025~~August 1, 2026, a debt collector must provide a written response to a New York City consumer's first dispute or first request for verification of the debt [as outlined in] under paragraph [(f)](6) of this [section, except for accounts purchased before December 1, 2024. To comply with this paragraph, a debt collector must] subdivision in accordance with the following requirements:

(i) [Provide] A debt collector must send the consumer [with a] written verification of the debt within [a 45-day period] the time period permitted by state law, but no later than 60 days after receiving the first dispute or first request for verification of the debt made by the consumer. A debt collector is not required to verify a debt pursuant to this paragraph more than once during the period that the debt collector owns or has the right to collect the debt; provided, however, that the debt collector must send a copy of any such verification documents, previously sent to the consumer, one additional time upon oral or written request by the consumer. [To resume collection activity after receiving the first dispute or the first request for verification of the debt made by a consumer, a debt collector must provide timely verification of the debt to the consumer in writing, by U.S. mail or delivery service, unless the consumer has consented to receive electronic communications in compliance with section 5-77(b)(5)];

(ii) [Cease] A debt collector must cease collection activity [within such 45-day period unless and] until the consumer is deemed to have received the written verification information. The debt collector may assume that a consumer received the verification information five business days (excluding Saturdays, Sundays, and legal public holidays identified in 5 U.S.C. § 6103(a)) after the debt collector sent it[.] ;

(iii) If [the] a debt collector, other than an original creditor, does not [provide] send the consumer [with] verification of the debt within [such 45-day] the required period, it cannot resume collection activity on the debt and must mail a notice of unverified debt to the consumer in accordance with paragraph [(f)](8) of this [section] of this subdivision;

(iv) If a debt collector that is an original creditor does not send the consumer verification of the debt within the required period, it must mail a notice of unverified debt to the consumer in accordance with paragraph (8) of this subdivision and may not resume collection unless and until it sends the consumer verification of the debt;

([iii]v)] Verification of debt must include:

(A) a copy of the judgment if a court has reduced the debt to judgment or a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the originating creditor, including the signed contract or signed application that created the debt or, if no signed contract or application exists, a copy of a document provided to the alleged debtor while the account was active, demonstrating that the debt was incurred by the consumer. For a revolving credit account, the charge-off account statement, the most recent monthly statement recording a purchase transaction, payment, or balance transfer shall be deemed sufficient to satisfy this requirement. Documents created or generated after the time of charge-off of the debt or institution of debt collection procedures shall not qualify as such confirmation unless they are an exact copy of the original from an electronic file or it is a judgment issued by a court;

(B) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt;

(C) the final account statement or charge-off statement, or other such document that reflects the total outstanding balance alleged to be owed, [mailed] that was provided to the consumer on or before the charge-off date and prior to the institution of debt collection procedures; and

~~([iv]vi) In matters involving a judgment obtained after adjudication on the merits of the case, there will be a rebuttable presumption that the debt collector complied with subparagraph [iii] (i) of this paragraph if it mails the consumer, by U.S. mail or other delivery service, a copy of the judgment and any evidence of indebtedness that is part of the record of the lawsuit. Notwithstanding the foregoing, a copy of a judgment obtained by default does not provide the consumer verification of the alleged debt.~~

(8) *Notice of unverified debt*. [A] For accounts where a validation notice is required to be sent pursuant to paragraph (1) of this subdivision on or after ~~October 1, 2025~~August 1, 2026, excluding those accounts purchased before ~~October 1, 2025~~August 1, 2026, a debt collector must do the following when sending a Notice of Unverified Debt:

(i) include a statement in such notice that despite having received a dispute or request for verification of the debt from the consumer, the debt collector is unable to verify the debt within the time allowed by New York City law and rules;

(ii) except for original creditors, disclose that it will cease any further collection on the debt, and note this information, clearly and conspicuously, in the consumer's account records;

(iii) for original creditors, disclose that it will cease further collection on the disputed debt unless and until verification of the debt is provided to the consumer, and note this information, clearly and conspicuously, in the consumer's account records

Commented [DR25]: If a court has determined that a debt is rightfully owed and it is reduced to a judgment, that judgment becomes the applicable document that must be provided the consumer.

Commented [DR26]: Most documents and evidence are stored electronically today, not as physical copies maintained in a filing cabinet. This sentence would essentially invalidate almost all debt.

An exception is also needed for judgments issued by courts.

Commented [DR27]: New York state just adopted in 2021 the Consumer Credit Fairness Act which provides extensive and detailed requirements for obtaining a judgment, including a default judgment. Additionally, included in section 306-d of the Civil Practice Law and Rules is the following provision: "No default judgment based on the defendant's failure to answer shall be entered unless there has been compliance with this section, and at least twenty days have elapsed from the date of mailing by the clerk. No default judgment based on the defendant's failure to answer shall be entered if the additional notice is returned to the court as undeliverable."

(iv) if applicable, disclose that the debt collector previously furnished information about the debt to a consumer reporting agency and that it will provide the disputed debt information to such agency to the extent not already provided, and upon request, provide a copy of the Notice of Unverified Debt to such agency;

([iv] v) include a statement that the consumer should retain a copy of the Notice of Unverified Debt and that the consumer may provide such notice to any other debt collector that attempts to collect on such debt;

(vi) include a statement that under the laws of the City of New York, any other debt collector with the information on the Notice of Unverified Debt cannot resume collection activity in New York City unless and until the verification of the disputed debt is provided to the consumer;

(vii) clearly and conspicuously provide that such information and the Notice of Unverified Debt will transfer if the account is sold, assigned, placed with an attorney to sue on the debt or is part of any litigation to recover on the debt by the debt collector, or if it is returned to a creditor, debt owner, or the entity that placed the account with the debt collector; and

(viii) deliver a timely written Notice of Unverified Debt to the consumer by U.S. mail or other delivery service in English and any other language used by the debt collector to communicate with the consumer in accordance with paragraph (f)(3) of this section.

(9) *Originating creditor*. A debt collector must provide the consumer the address of the originating creditor of a debt within [45] 30 days of receiving a request from the consumer for such address, provided that if the servicer is the name the consumer is most readily going to identify with the debt, that name and address may be provided. The consumer may make such request orally or in writing, or electronically if the debt collector uses electronic communications to collect debt, at any time during the period in which the debt collector owns or has the right to collect the debt. After receiving such a request, the debt collector must cease collection of the debt unless and until such address has been provided to the consumer. A debt collector is not required to provide this information more than once during the period that the debt collector owns or has the right to collect the debt.

Commented [DR28]: Most consumers are going to have no idea who the original creditor is on a fintech product. Since this is in response to the NYC validation request specifically it would be more consumer friendly to provide the fintech servicer name.

(10) [*Electronic communications*. If a debt collector delivers a duplicate copy of the validation notice to a consumer electronically, the debt collector must do so in accordance with § 5-77(b)(5) and the notice must include the debt collector's website, email address, and information on how the consumer can dispute the debt, seek verification of the debt, or request original-creditor information electronically.

(11)] *Disputes, verification, and reporting of medical debt. In general.* The term "medical debt" means an alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products, or devices provided to a person by a hospital, a health care professional or an ambulance service licensed, authorized, or certified under New York State law. "Medical debt" does not include debt arising from services provided by a veterinarian; debt charged to a credit card unless the credit card is issued under an open-end or closed-end credit plan offered solely for the payment of health care services; debt charged to a home equity or general purpose line of credit; or secured debt.~~Medical debt does not include debt charged to a credit card unless the credit card is issued under an open-ended or closed-end plan offered specifically for the payment of health care services, products, or devices provided to a person.~~

Commented [DR29]: This definition of medial debt will pull in home equity and general purpose lines of credit if the lines of credit are used for medical purposes. This is language adopted by the State of Maine which was carefully crafted to avoid unintended consequences.

(i) In connection with the collection of alleged medical debt from a New York City consumer, a debt collector is prohibited from:

(A) Entering into any contract for the collection of debt or any purchase agreement to buy such debt that includes reporting of information on medical debt to a consumer reporting agency.

(B) Furnishing any information on any portion of a medical debt to a consumer reporting agency.

(ii) If, at any time the debt collector has a right to collect on such medical debt and the consumer indicates that a public or private insurance plan, a third-party payer, or a financial assistance policy should have covered some or all of the charges on the amount asserted to be owed by the consumer on the medical debt, or that the debt is as a result of lack of price transparency at the time the services were rendered in violation of federal, state or local law, or that there is an open or ongoing appeal for financial assistance or insurance coverage on the debt, or that the collection is a violation of federal, state or local law, the debt collector must treat such communication by the consumer as a first dispute and a request for verification by the consumer on such medical debt; provided, that such dispute was received by the debt collector by any medium of communication or language used by the debt collector to collect debt, and such [information] verification has not already been provided to the consumer by the debt collector.

(iii) A debt collector must conduct a reasonable investigation and respond to a consumer's first dispute of the medical debt or first request for verification by providing verification of the debt in accordance with paragraph [(f)](7) of this [section] subdivision, and by clearly and conspicuously providing the consumer any information in its possession, readily available to the debt collector or required to be disclosed by the debt collector to the consumer on such medical debt under federal, state or local law[, or under the financial assistance policy of the hospital that originated the debt, even if a consumer does not specifically request the financial assistance policy]. If the debt originated in a hospital or covered medical entity, and such hospital or covered medical entity is the debt collector's client, the debt collector must also provide the financial assistance policy of such hospital or covered medical entity. A debt collector collecting on behalf of a financial institution is not obligated to provide financial assistance policy information to verify the medical debt to comply with this subparagraph. If the debt collector cannot meet the requirements herein, the debt collector must deliver to the consumer a notice of unverified debt within a [45] 60-day period in accordance with paragraph [(f)](8) of this [section] subdivision.

(iv) If a debt collector receives a dispute or request for verification of a medical debt by a New York City consumer, the debt collector must also do the following:

(A) treat all unverified accounts related to charges from one discrete hospitalization, or related treatments of one general health condition, from affiliated medical providers for medical services rendered within a six-month period, as also disputed by the consumer;

(B) unless the consumer has acknowledged owing the amount claimed to be owed on an account, or the consumer indicates in writing that the consumer does not wish to dispute such related account, note in all such related unverified accounts, in a manner that is easily identifiable and searchable in each of the consumer's related unverified accounts, that the debt is unverified or disputed; and

(C) offer to furnish, upon request by the consumer, written verification in accordance with paragraph [(f)](7) of this [section] subdivision for each related unverified medical debt account.

([12]11) *Expanded itemization of the debt*. *On accounts that are not credit card accounts or revolving lines of credit, if* ~~If~~ the debt collector receives a dispute from a consumer[, by any medium of communication or language used by the debt collector to collect debt, on the accuracy of any item of information contained in the itemization mailed to the consumer in accordance with] regarding any amount added to the total principal in the itemization provided in [paragraph (f)(1)(viii)] subparagraph (viii) of paragraph (1) of this [section] subdivision, the debt collector must provide a detailed breakdown of [any disputed amount on the itemization, specifying the consumer's obligation to pay] each individual charge itemized in addition to the principal balance, interest (listing the rates applied), costs or fees, and whether such amount was added to the debt based on the consumer's agreement with the creditor or otherwise as allowed by law. The expanded itemization of the debt must be treated by the debt collector as an obligation to provide verification of the debt in accordance with paragraph [(f)](7) of this [section] subdivision.

Commented [DR30]: Pre-charge off itemization on credit card accounts and revolving lines of credit are not possible. You could conceivably have an account that has not had a zero balance in 20 years. No one, even the creditors, maintain this data. Federal law only requires creditors to maintain this data for 24 months.

(g) Reserved.

(h) ***Public websites***. Any debt collector that utilizes, maintains, or refers New York City consumers to a website accessible to the public that relates to debts for which debt collection procedures have been instituted must clearly and conspicuously disclose, on the homepage of such website or on a page directly accessible from a hyperlink on the homepage labeled "**NYC Rules on Language Services and Rights**", the following disclosures:

(1) a statement informing the consumer of any language access services available; and

(2) a statement that a Glossary of Common Debt Collection Terms and other resources are available in different languages at www.nyc.gov/dcwp.

(i) ***Time-barred debts***. In connection with the collection of a debt, the following requirements must be met:

(1) A debt collector must maintain reasonable procedures for determining the statute of limitations applicable to a debt it is collecting and whether such statute of limitations has expired.

(2) [*Initial written validation notice*. if] *Notice of Time-Barred Debt*. If a debt collector, including a debt collection agency that must provide information to a New York City consumer pursuant to section 20-493.2(b) of the Administrative Code, seeks to collect on a debt for which the debt collector [has determined, including pursuant to paragraph (i)(1) of this section, or otherwise] knows or has reason to know, that the statute of limitations for [a] such debt has [or may have] expired, the debt collector must, before contacting the consumer about the time-barred debt by any other means, [initially] deliver to the consumer by U.S. mail or other delivery service a written [validation] notice [pursuant to section 5-77(f)(1), by U.S. mail or delivery service, that] of time-barred debt that:

(i) clearly and conspicuously discloses [to] in English and any other language used by the debt collector to communicate with the consumer substantially the same time-barred-debt disclosure below, [before contacting a consumer about the expired debt by any other means] except for changes allowed to conform with the New York State's disclosure:

• [The statute of limitations on] You have a right to know that this debt expired. This means you can't be sued to collect it. A court will not enforce collection.

IF YOU ARE SUED ILLEGALLY:

o It is a violation of federal law (the Fair Debt Collection Practices Act).
o You may be able to stop the lawsuit by telling the court that the statute of limitations on this debt expired.
o You are not required to admit that you owe this debt, promise to pay this debt, or waive the statute of limitations on this debt.
o Consult an attorney or a legal aid organization to learn more about your legal rights and options[.] ;

(ii) includes the disclosure required pursuant to paragraph (15) of subdivision (d) of this section; and

(iii) if the debt collector has already sent the consumer a validation notice pursuant to paragraph(1) of subdivision (f) of this section, an offer to provide the consumer a copy of such validation notice.

(3) *Waiting Period*. The debt collector must wait at least 14 consecutive days after mailing to the consumer the [validation] notice [with the] of time-barred debt [disclosure] pursuant to [this subdivision to receive a notice of undeliverability] paragraph (2) of this subdivision. During such waiting period, the debt collector must permit receipt of, and monitor for, notifications of undeliverability from communications providers. If the debt collector receives such notification during such waiting period, the debt collector must not contact the consumer, by any other means of communication, to collect the [expired] time-barred debt until the debt collector otherwise satisfies [section 5-77(i)(2)] paragraph (2) of this subdivision.

~~(4) *Subsequent Communications*. Unless otherwise permitted by law, the debt collector may not, without the prior written and revocable consent of the consumer given directly to the debt collector, contact such consumer in connection with the collection of [an expired] time-barred debt exclusively by telephone or by other means of oral or electronic communication. During any oral communications with the consumer, the time-barred disclosure must be given to the consumer to reasonably inform the consumer of the expired debt, in a language the consumer understands, before the debt collector conducts any collection activity including discussing the amount of the debt. After mailing the [validation] notice [with the] of time-barred debt disclosure required in paragraph [(i)](2) of this [section] subdivision, the debt collector must redeliver such time-barred debt disclosure to the consumer by U.S. mail or other delivery service within 5 days after each oral communication with the consumer unless the debt collector has already mailed such time-barred debt disclosure notice within 30 days. Any subsequent notice sent to the consumer electronically must be in accordance with other sections or laws, such as section 101(c) of the Electronic Signatures in Global and National Commerce Act (E- SIGN Act)(15 U.S.C. 7001(c)) or their successor provisions. A debt collector may not enter into a settlement agreement or receive payment on [an expired] time-barred debt account from a New York City consumer, if the debt collector has not satisfied [paragraph (i)(2) of the section] paragraphs (2), (3) and (4) of this subdivision.~~

Commented [DR31]: Requiring a written disclosure to be sent out within 5 days of each oral communication or every 30 days will create unintended consequences in that: (1) consumers may likely feel harassed by the constant deluge of disclosures; (2) consumers are likely become desensitized to and unlikely to read the notices or future notices; (3) it will create significant environmental costs through excess and unneeded letters being mailed that are likely not to be read; and (4) it will reduce the availability of credit to consumers if the debt is deemed to be too complicated to collect.

How will this language benefit the consumer? Under New York state law: (1) the consumer will still owe the debt; (2) the creditor/debt collector is still allowed to attempt collection on the debt; (3) the debt collector is still prohibited from suing; and (4) the debt collector is still prohibited from reviving the statute of limitations through a payment or affirmation of the debt.

Specifically, section 214-I of the Civil Practice Law and Rules which was codified in 2021 by New York's Consumer Credit Fairness Act (CCFA) that states: "Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period."

Lastly, as the law is currently written in New York State and New York City, consumers are provided with notice of the legal status of their debt when debt collectors try to collect debt from them, which is when it makes sense to inform the consumer of the expiration of the Statute of limitations on their account so that they can make an informed decision about their next steps concerning that debt. Specifically, the New York State Department of Financial Services requirement in 23 NYCRR 1.3 reads that "if a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the debt," the debt collector must inform the consumer that the Statute of Limitations on the debt has expired. Also, the current Rules of the City of New York in § 2-191 requires debt collectors to inform consumers that the Statute of Limitations has expired on their debt "...in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations..."

(5) [When such information is delivered in writing, the time-barred debt notice must be included] <u>A debt collector must include substantially the same time-barred debt disclosure as the disclosure contained in paragraph (2) of this subdivision in every permitted communication</u> for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other types on the communication, and placed on the first page adjacent to the identifying information about the amount claimed to be due or owed on such debt. A debt collector may include additional language to the time-barred-debt disclosure as may be required by the State of New York to send the consumer one disclosure notice.

<u>(6) A debt collector has satisfied the requirements of paragraph(2) of this subdivision if it included such required disclosure in the validation notice required by paragraph (1) of subdivision (f) of this section. Nothing in this paragraph shall be construed to limit other requirements of subdivision (f) of this section.</u>

(j) ***Medical debt from*** **a** ***covered medical entity****. In general.* In connection with the collection of medical debt, as defined in paragraph (f)[(11)] <u>(10)</u> of this section, from a New York City consumer arising from charges from a covered medical entity, a debt collector is:

(1) prohibited from collecting or attempting to collect on such medical debt if the debt collector knows or should know that:

(i) To do so violates federal, state, or local law, or the financial assistance policy of the covered medical entity.

(ii) The person has an open application for financial assistance with the covered medical entity.

(iii) The financial assistance policy should have provided financial assistance to the person to cover all, or a portion, of the medical debt.

(iv) A misrepresentation was made to the person about the financial assistance policy or payment options regarding the medical debt, including, but not limited to:

(A) The person was wrongly denied, or not given proper and timely notice of, available financial assistance;

(B) The person was discouraged from applying for financial assistance;

(C) The person was induced to agree to pay for all or part of the medical debt with misinformation about payment options or the financial assistance policy; or

(D) The person was only presented with options to pay or to agree to pay for all or part of the medical debt regardless of income level.

(2) required to conduct reasonable corrective measures upon obtaining information that the financial assistance policy was not disclosed to the consumer as required by law, or that there may be a violation of federal, state, or local law. A consumer may provide such information to the debt collector, by any means of communication or in any language used by the debt collector to collect debt, without the debt collector requiring the consumer to submit any supporting documentation to the debt collector. Corrective measures must be taken as follows:

(i) Inform the entity that placed the account with the debt collector within one business day that the debt may be subject to the covered medical entity's financial assistance policy.

(ii) Provide and record in plain language the following statement: "**A FINANCIAL ASSISTANCE POLICY MAY APPLY TO THIS MEDICAL DEBT**," in a manner readily noticeable and searchable, in the following records:

(A) all of the consumer's accounts arising from medical debt from the covered medical entity, from one discrete hospitalization, or related treatments of one general health condition within a six-month period;

(B) a written notification that must be sent by U.S. mail or other delivery service to the consumer along with the verification of the debt in accordance with [sections 5-77(f)(7) and (11)] paragraphs (7) and (10) of subdivision (f) of this section; and

(C) a written notification that must be sent to any receiving party upon transferring any of the consumer's accounts with medical debt from the same covered medical entity.

(iii) Provide any disclosure to the consumer regarding the financial assistance policy, by U.S. mail or other delivery service, clearly and conspicuously on the first page of any written communication from the debt collector to the consumer, and such disclosure must not be placed on the reverse side of the page or the second page. Any written notification to a consumer regarding the financial assistance policy may not be delivered exclusively by the debt collector through electronic means.

(iv) Maintain a monthly log or record of all consumer accounts in which the debt collector took corrective measures as required in [section 5-77(j)] this subdivision and such measures must be easily identifiable and searchable in each consumer account.

(k) ***Record retention***. A debt collector must retain the following records to document its collection activities with New York City consumers:

(1) Records that are evidence of compliance or noncompliance with part 6 of subchapter A of chapter 5 of title 6 of the Rules of the City of New York starting on the date that the debt collector begins collection activity on the debt until three years after the debt collector's last collection activity on the debt.

(2) Monthly logs or a record of the following:

(i) all complaints filed by New York City consumers against the debt collector and sent to the debt collector, including those filed with the agency directly or with any not-for-profit entity or governmental agency, identifying for each complaint the date, the consumer's name, and account information, the source of the complaint, a summary of the consumer's complaint, the debt collector's response to the complaint, if any, and the current status of the complaint;

(ii) all disputes or requests for verification of the debt made by New York City consumers, identifying each consumer's name and account information, the date of the dispute or request for verification, and the date and type of response, if any, sent by the debt collector; and

(iii) all requests to cease further communication made by New York City consumers, identifying the consumer's name and account information, the date of the request, and the date and purpose of any further contacts by the debt collector after receipt of the request from the consumer.

(l) The employer of a debt collector may not be held liable in any action brought under this rule if the employer shows by a preponderance of evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

To comply with this subdivision, debt collectors may combine all the monthly logs or records into one document or record or use a template: "Report for Consumer Activity" as made available on the Department's website at www.nyc.gov/dcwp.

Section 4. This rule takes effect ~~October 1, 2025~~August 1, 2026.

Commented [DR32]: The industry requests the restoration of the bona fide error defense which was in the prior DCWP debt collection rule. It is consistent with the FDCPA which DCWP indicates it wishes to seek alignment. An inadvertent clerical error should not lead to liability, especially if such error has not harmed the consumer or can be easily corrected with no harm to the consumer.

Commented [DR33]: The industry requests an effective date 12 months from the adoption of these rules. The CFPB also provided 12 months when they adopted Regulation F. These rules are far more complicated and detailed than Regulation F and will require a significant amount of operational changes.

Given the delay in the effective date, ongoing litigation, and DCWP's announced revisions, businesses have waited to understand what the final requirements will be before spending time and resources on what might be the final rule.

From:	Schumacher, Cristie
To:	rulecomments (DCWP)
Cc:	Quaranto, Corrie S
Subject:	[EXTERNAL] Northwell Health Comments on Proposed Debt Collection Rule Changes - June 10, 2025 Hearing
Date:	Thursday, June 12, 2025 9:04:03 AM

Dear NYC Department of Consumer and Worker Protection,

I am writing on behalf of Northwell Health, New York's largest healthcare provider serving patients across all five boroughs of New York City, to submit our formal comments regarding the proposed debt collection rule changes scheduled to take effect on October 1, 2025.

The proposed rules will significantly impact the third-party collection agencies we utilize, particularly for our Physicians' group collections. We respectfully submit the following comments for your consideration:

1. On Related Account Disputes: "The requirement to treat all related accounts as disputed when one account is disputed is particularly problematic for hospital systems like Northwell. A single episode of care often generates multiple bills from different providers within our system. This rule would unnecessarily delay legitimate collections on accounts that aren't actually in dispute, harming both providers and patients who benefit from timely resolution of their accounts."

2. On Communication Limitations: "The three-contact limit per seven days severely restricts our agencies' ability to reach patients. Many consumers require multiple contact attempts before responding, and these attempts often occur within a compressed timeframe to maximize effectiveness. We recommend either increasing this limit or creating exceptions for follow-up communications when a consumer has already engaged with the collector."

3. On Recordkeeping Requirements: "The extensive recordkeeping requirements create significant administrative burdens that will increase healthcare costs. For example, tracking all accounts related to a single hospitalization across multiple billing systems requires substantial technological investment with little consumer benefit. We recommend simplifying these requirements to focus on protecting consumers without imposing unnecessary operational costs."

4. Alternative Proposal: "We propose modifying the related accounts provision to apply only when the consumer specifically indicates that they are disputing all related

accounts. This would protect consumers who have legitimate disputes while avoiding unnecessary delays on accounts the consumer recognizes as valid."

Thank you for the opportunity to provide feedback on these important regulatory changes. We look forward to continuing to work with the DCWP to ensure that debt collection practices are fair and equitable while maintaining the operational efficiency necessary to provide high-quality healthcare services to New York City residents.

Sincerely,

Cristie Schumacher
Senior Director of Debt Management
Northwell Health Financial
2 Huntington Quadrangle
Melville, NY 11747
[redacted]

Northwell Health
Visit us at Northwell.edu

Online comments: 4

- **Mark Ravanesi**

  See attached.

  [Comment attachment](Comment-Letter-to-NYDCWP-June-2025.pdf)
  Comment-Letter-to-NYDCWP-June-2025.pdf

  Comment added June 9, 2025 6:21pm

TrueAccord

June 10, 2025

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Submitted via email to: rulecommentsdcwp.nyc.gov.

RE: Comments on Proposed Further Amendment of Rules Relating to Debt Collectors (NOH 2025 RG 010)

Dear Department of Consumer and Worker Protection:

On behalf of TrueAccord Corp., I appreciate the opportunity to comment on the Proposed Further Amendment of Rules Relating to Debt Collectors ("Proposed Amendment"). TrueAccord is a digital-first debt collection company committed to consumer-centric practices. We believe that fostering open and accessible communication channels is key to empowering consumers to address their financial obligations.

Since our founding in 2013, TrueAccord has sent over 1 billion emails and over 195 million SMS messages to consumers in debt. Less than 1% of consumers unsubscribe from these emails and only 2.07% opt-out of SMS.[1] Many consumers we reach out to take the time to provide public feedback about their digital TrueAccord debt collection experience, including through Google Reviews where

[1] All TrueAccord proactive emails have a one click to unsubscribe button at the top, as well as an unsubscribe link at the bottom through which they can unsubscribe from emails. SMS messages tell consumers to reply STOP to opt out. Any consumer can reply to these communications with other language to convey their desire to unsubscribe from further communications in these channels. TrueAccord has in place automated and human processes to identify and honor these consumers' preferences.

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TrueAccord has a 4.5 out of 5 star rating.[2] For example, this consumer told us in May 2025:

> Your system that is seeking to meet people on their terms is really working great. I received a text at my convenience. With a link to the payment. It was so straightforward and so cheap. I'm thrilled really, thank you. The way my life has been going [sic] that was such a positive experience.

Unfortunately, the Proposed Amendment will inadvertently restrict the use of email and text messaging, channels that consumers often prefer and that offer enhanced protections (see proposed section 5-77(b)(5)(i)). Under the Proposed Amendment, consumers must be contacted via phone or mail for consent before initiating email or text communication, delaying consumers' access to information critical for resolving accounts and improving credit. This delay can lead to other, more adverse outcomes, including debt collection lawsuits.

The Department should modify the Proposed Amendment to permit a debt collector to initiate email or text message communication. This approach would balance consumer protection with the practical realities of modern communication, align more closely with federal frameworks, and ensure that New York City consumers are not inadvertently disadvantaged by rules that limit access to their preferred communication methods.

The Proposed Amendment contains similar language restricting digital debt collection communications as the original DCWP proposal released in 2023. TrueAccord filed a November 29, 2023 comment with suggested revisions for your consideration (TrueAccord's 2023 Comment). Exhibit A, below, contains TrueAccord's suggested changes to the Proposed Amendment, revised with three principles in mind:

1. **Restricting digital communications by requiring an opt-in harms consumers.** Imposing an opt-in requirement stifles the flow of information that helps all consumers in debt make informed decisions about their finances and has a disproportionate impact on vulnerable populations of consumers who primarily conduct most of their affairs digitally.

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[2] *See* TrueAccord's Google Reviews (last visited June 5, 2025). Not all customers in debt provide positive feedback. Some TrueAccord customers file complaints. For every 1 million emails TrueAccord sends, TrueAccord receives about 1 regulatory complaint (defined as consumer complaints sent to TrueAccord by the CFPB, state Attorney General, the BBB, or other state regulatory agencies from 2020 through the present). Complaints about digital communication represent roughly 1 percent of these complaints.

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2. **Digital communications are a step forward in consumer protection**. Digital communications are easily controlled by consumers and are tightly managed by service providers with built in mechanisms to prevent harassment and a clear record of communications.

3. **Consumers typically prefer digital communications**. Consumers predominantly communicate with their banks, creditors, and lenders digitally, so digital collection is a smooth transition, easily accessed at the time chosen by the consumer.

TrueAccord is committed to working with the DCWP to develop balanced rules that protect consumers while allowing for effective and respectful communication. Please reconsider the Proposed Amendment not for debt collectors, but for the New York City consumers in debt who prefer digital communications, rely on the protections in digital communications, and deserve immediate access to information to make informed decisions about their past due accounts. We welcome the opportunity to discuss these comments further.

I. Digital Debt Collection

TrueAccord is a digital-first debt collection company, founded twelve years ago to improve the experience of consumers in debt collection. We aim to change the debt collection process using technology, so consumers can take care of their debt at their convenience and at a pace that works for them, while giving them the time they need to get back on their feet. We enter into contracts with eCommerce companies, lenders, debt buyers, and service providers to provide collection services on their past due accounts.

TrueAccord's Digital Debt Collection Communications

Almost all TrueAccord communications with consumers (94.8%) happen electronically with no agent interaction—as consumers prefer and demand—providing immediate access to information, answers, and documentation. The remaining 5.2% of consumers interact by inbound email or phone call with any of our over 60 customer care agents located in our Lenexa, Kansas headquarters.

Consumers are able to easily navigate to our website through a link we provide on our outbound digital communications. TrueAccord's online platform provides consumers with a variety of self-service options accessible via these individualized links. The options empower consumers to manage their debt, including establishing payment plans, accepting settlement offers, and customizing repayment terms. Consumers can easily report disputes, fraud, bankruptcy, attorney representation, financial hardship, or send

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personalized messages. They can also unsubscribe from communications, request to cease all collection activities, or decline to pay altogether. By example, this consumer told us last week,

> It was a non pressured program that was easy to set up, nice text reminders, i had the ability to defer payments if i needed a few extra days. I never got pushy phone calls and i never felt like a loser having to pay a debt i just didnt have the money for originally. I wish i could use this program for all of my late debts. It made it easier to catch up.

TrueAccord's Efforts to Promote Consumer Protection
As one of the larger companies leveraging electronic communication and patented machine learning in virtually all aspects of our customer interaction, TrueAccord is happy to provide data and information to assist lawmakers and regulators. Our Founder, Ohad Samet, served on the Consumer Advisory Committee to the Consumer Financial Protection Bureau (CFPB). Our Chief Compliance Officer, Katie Neill, currently sits on the Debt Collection Advisory Committee to California's Department of Financial Protection and Innovation. In these roles and through other outreach efforts, our team members have worked with regulators and stakeholders to think through the best methods to promote consumer protection.

TrueAccord provided significant feedback to the CFPB concerning Regulation F, the modernization of the federal FDCPA that took effect November 30, 2021 The final rule mirrored the majority of our practices, which notably does not require a consumer to opt-in to electronic communications. Instead, Regulation F requires all debt collectors include "clear and conspicuous" opt-out links on all digital communications (see 12 CFR § 1006.6(e)). Additionally, to send required disclosures electronically debt collectors "must do so in a manner that is reasonably expected to provide actual notice in a form the consumer may keep and access later" (see 12 CFR § 1006.42). This includes monitoring deliverability, identifying the debt collector as the sender of the email, and having two pieces of account information in the subject line.

TrueAccord also provided significant feedback to the Council for the District of Columbia regarding their Protecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 that took effect January 1, 2023 (DC Collection Law). The final amendment restricted outbound digital communications to one in a seven day period, unless the consumer opted into additional digital communication (email, text messages, private instant message on social media). The DC Collection Law requires all digital communications contain clear and conspicuous opt-out methods (unsubscribe flows in emails and "reply STOP to opt-out" in text messages)

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with strict penalties for debt collectors who do not honor a consumer's request to opt-out of digital communication channels.

Our recommendations to the Department (discussed herein) are based on data, our experiences, our consumers' experiences, and our work with federal and state lawmakers and regulators.

II. Unintended Harms to Consumers if Digital Communications are Restricted

Limiting Email Use Hurts Consumers
First, requiring special consent for email, text messaging, or other digital channels, when no such consent is required for calls and letters, hurts consumers by stifling the flow and access to immediate information that helps consumers make decisions about their accounts. It also increases unwanted calls by debt collectors seeking to obtain consent to communicate digitally.

A person's email address is typically the best, most accurate contact method—where phone numbers and addresses change, a person's email changes less frequently. Unlike phone numbers which are reassigned, email service providers do not reassign email addresses. At TrueAccord, 99.8% of accounts placed for collection have at least one email address provided by the creditor. Of these, 98.12% have a public domain email address (gmail, yahoo, hotmail, etc.).

Second, requiring consumers to opt-in to digital communications will negatively impact vulnerable populations. According to the Pew Research Center, 15% of adults are "smartphone-dependent" relying on mobile phones for internet access and 47% of Americans living in households earning less than $69,999 per year "rely on their smartphone to go online."[3] The Pew Report also found education and racial disparities resulting in smartphone dependencies. For example, about one-in-five Black or Hispanic adults compared with a smaller share of White adults and adults with lower levels of higher education are all more likely to be smartphone dependent.[4]

A National Council on Family Relations recent Policy Brief also concluded that for many low-income families, mobile phones are not just a convenience but a critical

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[3] Pew Research Center Report, "Americans' Use of Mobile Technology and Home Broadband," January 31, 2024, found online at: https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/ (last visited June 8, 2025).

[4] See the Pew Research Center Report, supra, footnote 6.

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link to economic opportunity, education, and healthcare, explaining that policies aimed at digital inclusion must consider the specific needs of mobile-first users.[5] TrueAccord knows this to be true from our interactions with consumers in debt. In our 2023 Comment, we quoted this consumer who told us on February 6, 2023:

> Thank you for creating a manageable approach and payment option to settle this account. Having been homeless until recently has made this time extremely difficult but I am thankful at how easy this was to accomplish thanks to your website and ease of access.

Our approach aligns with consumer preferences, as this consumer told us in April 2025:

> Times got hard and I had a lot of debt and it's overwhelming so I just ran from it. I have heard the term you can't get blood out of a turnip and that's so true. If you don't have it, you just don't have it. It doesn't mean you don't care about your responsibilities that you've created. But this company just emailed me randomly, nothing outrageous, no threats no blowing me up every day. And one day I just clicked on it, and there were some options that were too high for me, but then there was another option to set my own plan and it's a 12 month plan but we'll go as it goes in reevaluate after and that's tremendous. It's exactly what I need. I said it for $10 twice a month and they accepted all done online. Didn't even have to speak to anybody very easy very simple. Highly recommend trying it!

Requiring consumers to opt-in to digital communications will disadvantage these vulnerable populations of consumers who primarily conduct most of their affairs digitally.

Lastly, depriving consumers of the option to have easily available digital communications often results in disengagement and failure to communicate about account resolution. Unfortunately, when a debt collector is not able to reach a consumer, the creditor is forced to take more aggressive measures to collect, including filing a debt collection lawsuit to recover. In fact, when New York State

[5] National Council on Family Relations, "Reducing the Digital Divide for Families," July 8, 2024, found online at: https://www.ncfr.org/policy/research-and-policy-briefs/reducing-digital-divide-families-state-local-policy-opportunities (last visited June 8, 2025).

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passed a law requiring a debt collector to obtain consent prior to emailing a consumer,[6] New York had a subsequent rise in debt collection lawsuits. New York State lawsuit filings increased 61% from 2016 to 2017, and another 32% from 2017 to 2018, following the enactment of 23 NYCRR 1.[7]

In addition to lawsuits, there is a larger impact on the credit ecosystem. If debt collectors are unable to communicate and collect from consumers, credit becomes more difficult for consumers to obtain. The CFPB recognizes this, and stated "Fair and reliable collection of consumer debts is essential for a well-functioning consumer economy. If creditors are unable to collect debts at reasonable cost and with reasonable certainty, then they will be less likely to lend in the first place, especially to riskier borrowers."[8]

Digital Communications are a Step Forward in Consumer Protection
Digital communications already provide superior consumer protections than phone calls and letters for several reasons. First, all digital communications are written, documented, and can be searched. Email providers offer search and archiving options, automatically creating a paper trail of communication between the consumer and the collector.

Second, electronic communication offers significantly better protection from unwanted or harassing communication compared to phone calls and letters. Consumers hold the power and can easily opt out of electronic communication by clicking "unsubscribe," marking emails as spam, replying STOP to a SMS, or blocking a number entirely from their device. Since 2024, email service providers require bulk senders to provide a one click unsubscribe at the top of every communication.[9] The same is true for text messaging. Consumers hold the power and can easily reply STOP, QUIT, END, UNSUBSCRIBE, CANCEL, OPT-OUT, etc. to stop future text messages. The telephone carriers heavily police senders and in some cases block text message communications altogether for failure to abide by their rules, including

[6] See, 23 NYCRR 1 § 1.6 (2015).

[7] Yuka Hayashi, *Debt Collectors Wage Comeback*, Wall Street Journal, July 5, 2019.

[8] CFPB Task Force on Federal Consumer Financial Law Report, January 2021.

[9] See, for example, Google's Email Sender guidelines that took effect in February 2024, found at: https://support.google.com/a/answer/81126?hl=en (last visited June 7, 2025).

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the Short Code Registry[10] governed by the Cellular Telecommunications Industry Association (CTIA) that implements an annual registry vetting process for all issued codes. It is already a violation of the FDCPA to send digital communications without a clear and conspicuous statement of how to opt-out.[11] It is also already a violation of both email service provider requirements and the SMS short code rules.[12] Therefore, today, any debt collector communicating digitally without a method to opt-out on the digital communications would not only be liable on a class action basis under the FDCPA but would not be able to deliver digital communications for long without getting blocked and banned by the carriers.

Third, embedded email and texting protections prevent bad actors who use emails and texts to harass senders. For example, when a consumer marks an email as spam, the consumer's email service provider (gmail, yahoo, hotmail, etc.) will downgrade the sender and if more than one consumer marks the same sender as spam the email service provider will ban the sender from delivering emails. Senders tagged as spammers have a less than 5% success rate of reaching consumer inboxes. Legitimate businesses must have a well-designed deliverability strategy that includes internal frequency limits to ensure the ability to reach the inbox. The same is true for text messaging. When a consumer replies stop, many SMS providers will not permit future texts from the sender to any number who previously opted out from that sender. Similar protections are not available for mail and calls.

Consumers Prefer Digital Debt Collection

By and large, consumers prefer to communicate with their collection agencies digitally. Consumers use the internet, mobile devices and their emails for communication, shopping and financial transactions. Consumers are regularly online and conduct the majority of their financial affairs digitally. Consumers already opt-in and communicate through primarily digital channels with their creditors.

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[10] See the Short Code Monitoring Program Handbook, version 1.9, August 2, 2023, detailing all the compliance requirements for companies using short codes, found at: https://api.ctia.org/wp-content/uploads/2024/01/CTIA-Short-Code-Monitoring-Handbook-v1.9-FINAL.pdf (last visited June 8, 2025).

[11] See 12 C.F.R. § 1006.6(e) which states "A debt collector who communicates or attempts to communicate with a consumer electronically in connection with the collection of a debt using a specific email address, telephone number for text messages, or other electronic-medium address must include in such communication or attempt to communicate a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications or attempts to communicate by the debt collector to that address or telephone number."

[12] See footnotes 9 and 10, supra.

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According to the Pew Research Center, 41% of U.S. adults report using the internet almost constantly.[13] In fact, 90% of TrueAccord consumers visit our web portal from their mobile devices and tablets, not their desktop computer.[14]

When a customer defaults on their account, it is a disruption to their lives to suddenly receive phone calls and letters regarding an account for which they previously only communicated via digital channels. Many of TrueAccord's creditor-clients, concerned about their consumer experience and their brand image, prefer a seamless transition to debt collection and prohibit TrueAccord from making any outbound calls or sending letters on their accounts because their customers have only ever interacted digitally.[15]

If a consumer decided that they did not want to communicate digitally on an account in collection, consumers can unsubscribe at any time whether through email or SMS. TrueAccord provides consumers with the option to unsubscribe on every email and to reply STOP to opt-out on every text message. In addition to the consumer's ability to opt-out of digital communications directly with TrueAccord, the consumer has the ability to identify the sender as spam directly with their email service provider or block a number from their device, essentially barring the sender from using email or SMS.

Second, digital debt collection further provides consumers the opportunity to review their account information and options—on their own time—and when they are able to repay. Using digital channels allows consumers to engage at times when they are

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[13] See the Pew Research Center Report, supra, footnote 3.

[14] A significant majority of TrueAccord consumers ages 50 and above (specifically 85%) utilize their mobile devices to access our web portal.

[15] Under the Telephone Consumer Protection Act consent to send text messages given to the creditor transfers to a debt collector. See for example, *Fober v. Management and Technology Consultants, LLC,* 886 F.3d 78, 794 (9th Cir. 2018) (holding that a consumer can provide prior express consent through an intermediary based upon the scope of the consumer's consent); *Kuch v. PHH Mortgage Corporation, 2021 WL 6424638, at *8 (W.D.N.Y. 2021) ("[T]he FCC specified that 'a consumer who provides his or her wireless telephone number on a credit application, absent instructions to the contrary, has given prior express consent to receive autodialed or prerecorded message calls 'regarding the debt' at that number,* ***including autodialed and prerecorded debt collection calls from a debt collector acting on behalf of the creditor****.)(emphasis added)(citing Matter of GroupMe, Inc., 29 F.C.C. Rcd. 3442, 3445-46 (F.C.C. 2014))*; the FCC Orders on the ability of a debt collector to rely on consent provided to the creditor such as *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,* 23 FCC Rcd. 559, 559 (2008)(prior express consent exists when one has made their number available to the creditor). *See also, Regulation F,* 85 FR 76734, 76780 (noting that "nothing in 1006.6(d)(4)(i) prohibits a debt collector from sending an email to an email address provided by the consumer to the creditor.") The Proposed Revision does not alter the protections against third party communications that already exist in 15 U.S.C. 1692(c)(b).

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available, without having to feel pressured by collectors on the phone, and using an experience consumers are used to in other areas of their lives. Simply put, digital communications are convenient and less stressful.

For example, almost all TrueAccord communications with consumers (94.8%) happen electronically with no agent interaction because the electronic communications contain links to online pages where consumers can take action on their accounts, everything from disputing the account, reporting identity theft, negotiating payment arrangements, setting up a payment plan, changing scheduled payments, reporting a hardship, unsubscribing, etc. In fact, 31% of consumers resolve their accounts outside of typical business hours—before 8AM and after 6PM—when our call center agents are not at the office. More than 24% of consumers resolve their accounts before 8AM and after 9PM, when it is presumed inconvenient to contact consumers under the federal Fair Debt Collection Practices Act (FDCPA).

Using our online tools, consumers have immediate access to information, answers, and documentation. Consumers can dispute, unsubscribe, report identity theft, make a payment, set up a repayment plan, make changes to their payment plan, request a hardship, report a bankruptcy, review their rights (via links to the CFPB's website), etc. The remaining 5.2% of consumers who do interact with an agent, send an inbound email or make a phone call to our inbound call center where any of our customer care agents are prepared to assist with their request.

III. Proposed Amendment to 6 RCNY § 5-77(b)(5)

To help promote consumer protection and minimize the unintended consequences in the Proposed Amendment restricting digital communication, we urge that TrueAccord's suggested revisions to the Proposed Amendment (found in red font in Exhibit A) be incorporated into DCWP's final draft.

Consumers Should Not Have to Opt-In to Electronic Communications
The edits TrueAccord proposes to Section 5-77(b)(5)(i)(B), would permit a debt collector to communicate electronically with a consumer one time every seven days.

These suggested edits are modeled in part on D.C. Law 24-154 Projecting Consumers from Unjust Debt Collection Practices Amendment Act of 2022 which achieves the same consumer protections in electronic communications sought by the DCWP without placing further burdens on consumers to have to opt-in again to electronic communications about the account.

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As currently drafted, the Proposed Amendment suggests that consumers who already provided their creditor with their electronic communication contact information would not want to communicate electronically with a debt collection company hired by the creditor. When a consumer provides their electronic contact information (email address or cell phone number) to the creditor, there should be little doubt that the consumer desires to communicate electronically about their account after default. For example, this New York consumer posted the following google review in February 2025:

> Thank you for your patience and understanding through this extraordinarily difficult time for me. I didn't feel attacked, threatened, or hounded at all ❣️ Your company is the first creditor I've paid because you handle your important business with integrity and humility. I am truly grateful. All my best from ours to yours!"

If a consumer does not wish to communicate electronically with a debt collector, the consumer can unsubscribe.[16] TrueAccord strongly supports robust consumer opt-out rights, as already detailed in the federal law and the Proposed Amendment (§ 5-77(b)(5)(v)). We believe these provisions provide consumers with effective control over communications.

Unsubscribe Hyperlink to Satisfy Clear and Conspicuous Disclosure

TrueAccord also suggests an additional phrase be inserted into Section 5-77(b)(5)(v) to clarify that the revocation of consent disclosure may be satisfied through a standard unsubscribe hyperlink. This clarification will match the one-click unsubscribe language required by the email service providers.[17] Additionally, it will avoid lawsuits claiming the term "unsubscribe," a universally recognized term to opt-out of email communications, does not qualify as a "clear and conspicuous written disclosure that the person may revoke consent."

The proposed clarification will also ensure that consumers can opt-out as they do from all other unwanted communications in other industries, as this method of

[16] TrueAccord provides multiple options for consumers to unsubscribe: consumers can unsubscribe using the email hyperlink, replying STOP or something similar to opt-out, call into our call center to tell an agent, reply to any email communication expressing the desire to opt-out, fill out a form on our webpages (generating an inbound email to our call center), or mail a letter. See also, footnote 11, supra.

[17] See footnote 9, supra.

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opt-out is a common practice expected and used by consumers and required by carriers.

Permit the Initial Communication By Email
TrueAccord suggests the Proposed Amendment be revised to match the FDCPA language regarding the validation notice so that an initial communication sent through digital channels (and otherwise in compliance with the NYC law) would satisfy Section 5-77(f).[18]

Include an Effective Date Providing At Least One Year to Comply
Section 2-193 of the Amendment requires debt collectors to log and create reports of additional information not required to be logged today in the manner specified by the proposed law. It will take at least one year for our company to be able to revise our collection software system to add these new fields and reporting capabilities. In some cases, we will need to work with our software vendors to support the necessary changes. TrueAccord supports the outline of proposed changes provided in the comments submitted by our industry associations, the Receivables Management Association and American Collectors Association, in regards to these sections.

IV. Conclusion

TrueAccord appreciates the DCWP taking this opportunity to amend the debt collection law. We would very much appreciate the opportunity to answer any questions that you may have, including provisioning any additional data the DCWP may need in considering the proposed changes.

On behalf of TrueAccord,

Mark Ravanesi
Chief Executive Officer

cc: legal@trueaccord.com

[18] See 15 U.S.C. §1692(g)(a).

EXHIBIT A - PROPOSED REVISIONS

TrueAccord's suggested revisions are in red font below.

Section 5. Section 5-77 of Part 6 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-77. Unconscionable and Deceptive Trade Practices.

* * * *

(5) Contact a New York City consumer by electronic communication to collect or attempt to collect debt unless the debt collector satisfies the following requirements:

(i) A debt collector may only use a specific email address, text message number, social media account, or specific electronic medium of communication if such electronic communication is private and direct to the consumer and one of the following requirements is met:

(A) the debt collector only sends one electronic communication in a seven day period unless the debt collector obtains revocable consent from the consumer in writing, given directly to such debt collector, to use such email address, text message number, social media account, or other electronic medium of communication to communicate about the specific debt more frequently, and the consumer has not since revoked the consent, provided that a debt collector may correspond with a consumer through electronic communications after receiving oral consent from the consumer solely to satisfy the requirements of this paragraph and to obtain written consent, but the debt collector may not collect or attempt to collect debt by electronic communications in excess of one electronic communication in a seven day period until the requirements in this paragraph are satisfied;

(B) the debt collector is the original creditor and obtained consent from the consumer, given directly to the debt collector, to use such email address, text message number, social media account, or another electronic medium of communication to communicate about the specific account prior to the institution of debt collection procedures, and the consumer has not since revoked such consent, provided that, after the institution of debt collection procedures, such debt collector informs such consumer in writing of their right to revoke such consent to use such email address, text message number, social media account, or another

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electronic medium of communication to communicate about the specific account; or

(C) the consumer used such email address, text message number, social media account, or another electronic medium of communication to communicate with the debt collector about a debt within the past 60 days and the consumer has not since opted out of communications to that email address, text message number, social media account or other electronic medium of communication or opted out of all electronic communications generally.

(ii) A person's electronic signature constitutes written consent under this section, provided it complies with all relevant state and federal laws and rules, including article three of the New York Technology Law (New York Electronic Signatures and Records Act) and chapter 96 of title 15 of the United States Code (Electronic Signatures in Global and National Commerce Act).

(iii) The written consent, revocable by the consumer, is retained by the debt collector until the debt is discharged, sold, or transferred.

(iv) A debt collector who sends any disclosures required by this subchapter electronically must do so in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later.

(v) The debt collector must include in every electronic mail communication to the consumer a clear and conspicuous written disclosure that the person may revoke consent to receive electronic communication at any time, and a reasonable and simple method by which the consumer can opt-out of further electronic communications or attempts to communicate by the debt collector, which may include replying "stop," or an "unsubscribe" hyperlink, provided that, the debt collector must also accept any other word(s) sent in a response by a consumer that reasonably indicates the consumer wishes to opt-out. The disclosure to the consumer must be in the same language as the rest of the communication and the debt collector must accept the consumer's opt-out request in the same language as in the initial electronic communication that prompted the response from the consumer or in any language used by the debt collector to collect debt.

(vi) The debt collector may not require, directly or indirectly, that the consumer pay any fee to opt-out or provide any information other than the consumer's opt-out preferences and the email address, text message number, social media account, or other electronic medium subject to the opt-out request.

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(vii) Consent to communicate electronically under this paragraph shall not relieve a debt collector of any other requirement in this section to send a communication in a specific form or format, including but not limited to sending a written validation notice by U.S. mail or other delivery service pursuant to paragraph (1) of subdivision (f) of this section .

* * * *

(f) Validation of debts. Debt collectors, except debt collectors that are required to comply with 15 U.S.C. § 1666 (Fair Credit Billing Act) and who provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 U.S.C. § 1666 and regulations promulgated thereunder, must comply with the following requirements regarding validation of debts:

(1) Validation notice. Within five days after the initial communication with a New York City consumer in connection with the collection of any debt, a debt collector must send the consumer a written notice containing any and all information required by federal and state law, as well as the following information in a clear and conspicuous manner, unless the consumer paid the debt or such information was contained, clearly and conspicuously, in the ~~[an]~~ initial ~~[written]~~ communication ~~[sent by U.S. mail or other delivery service]~~, or if the initial communication with the consumer occurred before October 1, 2025 and a validation notice was already sent to such consumer:

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Lenexa, KS 66219

www.TrueAccord.com

- **Don Maurice on behalf of RMAI**

  See the attached testimony on behalf of RMAI.

  [Comment attachment](#)
  NYC-Debt-Collection-Rule-Testimony-2025-06-10-Final.pdf

  Comment added June 10, 2025 12:07pm

TESTIMONY OF
DONALD MAURICE

Proposal to Amend Rules Relating to Debt Collectors

June 10, 2025

My name is Donald Maurice, I am outside counsel to the Receivables Management Association International (RMAI).

Our prior submissions and our submissions in connection with this latest round of amendments detail our many objections. This morning, I will focus my testimony on one – the speech bans and restrictions.

The amended rule provides that more than three communications in a seven-consecutive-calendar-day period violate the rules outright.

Also, the City proposes to ban debt collectors for communicating or attempting to communicate with a consumer during the consumer's work hours, not just at the consumers place of employment.

The City also proposes to restrict electronic communications.

The City excepted certain entities, including all governmental entities, from these bans and restrictions.

The bans and restrictions are unconstitutional because they are content-based. We know they are content-based because "on their face" they draw distinctions based on the message a speaker conveys.[1] For example, the proposal exempts government-debt-collection speech over debt collection speech made by creditors and debt collectors. In this regard, it "singles out specific subject matter for differential treatment."[2]

The restrictions are also unconstitutional because they are not "narrowly tailored to serve a significant governmental interest."[3] For example, the City cannot explain how more than three telephone calls to collect a government-backed debt "is any less intrusive or could be

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[1] *Barr v. Am. Ass'n of Political Consultants*, 591 U.S. 610, 618, 140 S. Ct. 2335, 2346 (2020), quoting *Reed v. Town of Gilbert,* 576 U.S. 155, 163, 135 S. Ct. 2218 (2015).
[2] *Id.,* quoting *Reed,* 576 U.S. at 169.
[3] "In my view, however, the government-debt exception in 47 U. S. C. §227(b) still fails intermediate scrutiny because it is not 'narrowly tailored to serve a significant governmental interest.'" *Id.,* (Sotomayor, J., concurring) quoting *Ward v. Rock Against Racism*, 491 U. S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989) (internal quotation marks omitted).

any less harassing than more than three debt-collection calls about a privately backed debt."[4]

In fact, the data shows the opposite.

In 2019, the Consumer Financial Protection Bureau ("CFPB") recognized that not all debt collection calls are unwanted and can be highly beneficial: "Communicating with a debt collector," the CFPB said, may benefit a consumer by helping the consumer to either resolve a debt the consumer owes, or identify and inform the debt collector if the debt is one that the consumer does not owe."[5]

The CFPB found that telephone calls are a customary and appropriate way to contact consumers at the outset to accomplish these ends.[6]

Indeed, the CFPB found that " that response rates to [debt collection] letters can be quite low." *Id*., at p. 368. The CFPB found that delays in reaching consumers from their not responding to a debt collector's written communications often results in consumers being "less willing or able to repay the debt."[7]

Debts grow over time, so the delays caused by these bans harm both the consumer, and the credit industry.

RMAI's review of the CFPB's Complaint portal for the period November 30, 2021, through yesterday, revealed **only 570 consumer complaints concerning excessively frequent telephone calls were made by New York State consumers**.[8] That is the entire state, not just City residents, over a period of nearly four years. It is an average of 13 complaints a month in a state whose population is nearly 20 million.

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[4] *Id.*
[5] CFPB, 12 C.F.R. Part 1006, Debt Collection Practices (Reg. F) (May 6, 2019) at p.6, available at https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-NPRM.pdf.
[6] *Id*., at pp.13, 50, 109-10, 368-69 & n.632.
[7] *Id*., at pp. 368-369.
[8] CFPB Complaint Database accessed May 10, 2024 at https://www.consumerfinance.gov/data-research/consumer-complaints/search/api/v1/?date_received_max=2025-06-09&date_received_min=2021-11-30&field=all&format=csv&issue=Communication%20tactics%E2%80%A2Frequent%20or%20repeated%20calls&no_aggs=true&product=Debt%20collection&size=570&state=NY

There is no data to the contrary.

We urge you to fix these unconstitutional provisions as well as the other issues as we addressed in our written submissions.

For additional information, please reach Don Maurice at dmaurice@mauricewutscher.com or call (908) 237-4570.

- **Brent Weitzberg**

  To Whom It May Concern:

  Attached are NYBA’s comments as part of the hearing record.

  Sincerely,
  Brent

  Comment attachment
  NYBA-Letter-to-DCWP_Debt-Collection_6-10-25.pdf

  Comment added June 10, 2025 1:24pm

Via Electronic Submission

June 10, 2025

Commissioner Vilda Vera Mayuga
New York City Department of Consumer & Worker Protection
42 Broadway
New York, NY 10004
rulecomments@dcwp.nyc.gov

Dear Commissioner Mayuga:

The New York Bankers Association ("NYBA")[1] submits this comment letter in response to the New York City Department of Consumer & Worker Protection's ("DCWP") Notice of Proposed Amendments to the rules governing debt collectors, published in the New York City Record on April 10, 2025 ("Proposed Amendments").[2] We share the Department's goal of preventing abusive and predatory debt collection practices and we thank you for the opportunity to provide our views on this matter.

General Comments

DCWP's efforts to amend the rules governing debt collectors began in November 2022. Under its original proposal, creditors collecting debts in their own name did not fall within the definition of "debt collector."[3] DCWP retained this definition in the re-noticed amendments it proposed in September 2023[4] and adopted in August 2024.[5] After two years of consistent messaging, DCWP abruptly and inexplicably changed its tune and announced in November 2024 that creditors collecting on debts in their own name would be subject to the rules governing debt

1 NYBA comprises smaller community, mid-size regional, and large banks across every region of New York State. Together, NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans. NYBA members also support their communities through an estimated $200 million in community donations and 500,000 employee volunteer hours.

2 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CLII, No. 69, April 10, 2025, at 1899-1910.

3 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CXLIX, No. 213, Nov. 4, 2022, at 5485.

4 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CL, No. 188, Sept. 29, 2023, at 4995.

5 Department of Consumer & Worker Protection, Notice of Adoption, The City Record, Vol. CLI, No. 155, Aug. 12, 2024, at 4071.

collectors.[6] Following pushback from stakeholders, including NYBA, who argued, among other things, that the November 2024 proposal did not provide stakeholders with sufficient notice, DCWP issued the current Proposed Amendments on April 10, 2025.

The Proposed Amendments' definition of "debt collector"—though narrower than the definition proposed in November 2024—still includes an expansive group of original creditors, including banks, collecting debt after the initiation of "debt collection procedures." Although this is an improvement over the November 2024 amendments, it remains highly problematic. The Proposed Amendments now tie the definition of "debt collector" to the initiation of "debt collection procedures." They also substantially broaden the definition of "debt collection procedures." As a result, banks must now comply with the rules governing debt collectors in a wide array of new circumstances. To make matters worse, the amendments DCWP adopted in August 2024—on which it "welcomes comments"[7]—impose a number of burdensome obligations on debt collectors. When DCWP proposed and adopted these obligations, however, the proposed definition of "debt collector" did not include banks and other original creditors.[8]

The net effect of these changes is that the Proposed Amendments will impose additional, substantial operating burdens and costs on banks and consumers without yielding any enhancements to the broad range of consumer protections already applicable to bank customers under state and federal law. Indeed, the Proposed Amendments will only reduce the frequency and quality of communications between banks and consumers and lead to higher prices and reduced availability of credit products. The Proposed Amendments will also incentivize banks to more rapidly accelerate or charge-off consumer accounts, resulting in accounts being sent to third-party debt collectors earlier than they otherwise would, if at all. This, in turn, will result in more frequent litigation over the collection of consumer debts. The Proposed Amendments will thus significantly harm New York City's banking industry and the millions of City residents who rely daily upon it.

In addition, application of the Proposed Amendments to banks is preempted by both state and federal law. The New York Banking Law is a comprehensive regulatory scheme that forecloses local regulation of banks chartered by New York State. The Proposed Amendments are thus preempted as a matter of state law. This conclusion means the Proposed Amendments are also preempted under the National Bank Act, which preempts laws that discriminate against national banks. Here, applying the Proposed Amendments to national banks, but not state-chartered banks, would discriminate against national banks by placing additional restrictions on

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6 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.

7 Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CLII, No. 69, April 10, 2025, at 1900.

8 *See* Department of Consumer & Worker Protection, Notice of Adoption, The City Record, Vol. CLI, No. 155, Aug. 12, 2024, at 4071; Department of Consumer & Worker Protection, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, The City Record, Vol. CL, No. 188, Sept. 29, 2023, at 4995.

their ability to collect on their debts relative to state-chartered banks. Moreover, certain sections of the Proposed Amendments may be preempted by the National Bank Act for a second reason: they significantly interfere with and prevent the exercise of national banks' powers by sharply limiting banks' ability to collect on their own debts.

For these reasons, and as we outline below in more detail, DCWP should return to its original inclination in this rulemaking process and exempt original creditors collecting debts in their own name from the rules governing debt collectors.

I. Banks Should Not Be Subject to the Rules Because Banks are Fundamentally Different than Third-Party Debt Collectors

The Proposed Amendments are an improvement from DCWP's November 2024 proposal insofar as they draw some distinctions between banks and third-party debt collectors. At bottom, though, the Proposed Amendments remain seriously flawed because they still subject banks to similar regulations as third-party debt collectors. Such treatment is completely unwarranted, however, because the two types of entities have vastly different regulatory frameworks, business models, and relationships with consumers.

To begin, banks' interactions with consumers are already governed by a robust set of federal and state consumer-protection laws and regulations. For example, depending on the specific product offered, banks must comply with the Electronic Fund Transfer Act,[9] the Truth in Lending Act,[10] and/or the Real Estate Settlement Procedures Act,[11] among others. Banks must also comply with the Fair Credit Reporting Act when furnishing information to consumer-reporting agencies.[12] Many of these statutes require banks to provide disclosures and make available dispute-resolution procedures to consumers. Moreover, banks are subject to regular supervisory examinations by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp., the Consumer Financial Protection Bureau, and/or the New York State Department of Financial Services to ensure compliance with these laws, as well as regular internal and external audit requirements.

In addition, banks and third-party debt collectors have very different business models and relationships with consumers. Consumers voluntarily select the institution with which they bank, and similarly choose from among the range of credit and loan products available from that bank. Often, consumers form lasting relationships with their bank, maintaining multiple accounts and obtaining multiple separate credit and other products over time. A consumer may have, for example, a checking account, a savings account, a credit card, an automobile loan, and a residential mortgage all with the same bank. Banks have a vested interest in fostering and expanding this long-lasting, voluntary relationship. Banks therefore seek to work with consumers to resolve a

9 15 U.S.C. § 1693 *et seq*.

10 15 U.S.C. § 1601 *et seq*.

11 12 U.S.C. § 2601 *et seq*.

12 15 U.S.C. § 1681 *et seq*.

consumer's financial issues while avoiding the negative credit consequences that result from charging off the consumer's account. To do so, they employ a variety of intervention efforts, such as workout programs and payment extensions, and only charge-off accounts as a last resort.

In contrast, third-party debt collectors have an involuntary, transient relationship with consumers that begins when the debt collector purchases the right to collect the consumer's debt or receives the debt from the original creditor. A third-party debt collector typically has no other relationship with a consumer. Nor does it have an interest in forming a lasting relationship with the consumer; it simply wishes to collect the debt. In part because of these differences, third-party debt collectors are not subject to many of the consumer-protection statutes discussed above.

It is because of these differences between banks and third-party debt collectors that state and federal law—as well as DCWP through almost two years of this rulemaking process—distinguish between banks, on one hand, and third-party debt collectors, on the other hand, in regulation and oversight. For example, the federal Fair Debt Collection Practices Act excludes original creditors, such as banks, from its scope.[13] So too do the New York State Department of Financial Services' debt-collection regulations.[14] New York General Business Law Article 29-H likewise distinguishes between principal creditors, such as banks, and debt-collection agencies.[15] These exclusions recognize the comprehensive regulatory framework already governing banks' interactions with consumers, while at the same time facilitating the safe, transparent, and largescale extension of credit on a daily basis to millions of New York City residents.

In ignoring the crucial differences between banks and third-party debt collectors, the Proposed Amendments conflict with existing state and federal approaches by imposing obligations that both New York State and the Federal Government intentionally chose not to require of banks. Worse still, DCWP has introduced this conflict between its rules and the state and federal approaches without justification. Nowhere has DCWP explained why, despite their differences, banks should be regulated the same as third-party debt collectors. Nor has DCWP acknowledged the significant compliance costs the Proposed Amendments will impose on banks and, more importantly, the harms that will befall consumers.

The harms to consumers will be both significant and immediate. The Proposed Amendments jeopardize important consumer benefits derived from the banking relationship. Subjecting banks to the proposed versions of sections 5-77(b) and 5-77(f) will, at a minimum, require banks to reconsider the frequency and means by which they communicate with consumers regarding their debts, given the limitations and obligations those sections impose on when and how banks may communicate with consumers. The likely result will be less-informed consumers who have a more distant relationship with their bank. This will directly harm consumers by depriving them of information on available debt-relief options. As discussed in greater detail below, section

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13 15 U.S.C. § 1692a(6)(A); *see also* S. Rep. No. 95-382, at 3 (1977) ("The term debt collector is not intended to include the following: 'in house' collectors for creditors so long as they use the creditor's true business name when collecting").

14 23 N.Y. C.R.R. § 1.1(e)(1).

15 N.Y. Gen. Bus. L. § 600.

5-77(f) of the Proposed Amendments is also likely to confuse consumers because it requires mandatory disclosures that duplicate information that banks already provide, with only a limited exception if the bank is required to comply with 15 U.S.C. § 1666 (Fair Credit Billing Act). Section 5-77(e)(10) of the Proposed Amendments may also cause higher costs and reduced availability of a wide range of safe and transparent credit products and loss-mitigation options that are currently available to New York City consumers by undermining the accuracy of the consumer-reports on which banks rely to make underwriting decisions. Indeed, the cumulative effect will be to increase the cost of credit for New York City residents, given that banks must make costly modifications to their systems and practices to comply with the Proposed Amendments. Rather than implementing these burdensome modifications, banks may simply charge-off and send accounts to third-party debt collectors earlier than they otherwise would.

II. The Proposed Amendments are Preempted by Both State and Federal Law

The New York State legislature has declared that it is "the policy of the state of New York that the business of all banking organizations shall be supervised and regulated through the department of financial services."[16] In light of this declaration, the Department of Financial Services has "broad powers of regulation to control and police the banking institutions under [its] supervision."[17] The Department administers the New York Banking Law, which grants state-chartered banks the power to "negotiate promissory notes, drafts, bills of exchange, other evidences of debt, and obligations in writing to pay in installments or otherwise all or part of the price of personal property or that of the performance of services" and the power to "lend money on real or personal security," as well as "all such incidental powers as shall be necessary to carry on the business of banking."[18] Collecting on their own debts is a necessary corollary to these explicitly enumerated powers and thus qualifies as an incidental power of state banks.[19] In addition to its supervisory role over New York chartered banks, the Department of Financial Services is also tasked with "oversight of debt collectors" and sets the "basic rules for debt collection in New York."[20] In this role, it has issued detailed regulations governing debt-collection practices by third-party debt collectors that explicitly exclude banks and other original creditors.[21]

The New York Banking Law "evinces an intent to preempt the field of regulating state-chartered banks."[22] It thus preempts DCWP's Proposed Amendments as applied to banks

16 N.Y. Banking L. § 10.

17 *New York Bankers Ass'n, Inc.* v. *City of New York*, 119 F. Supp. 3d 158, 194 (S.D.N.Y. 2015) (quoting *N.Y. State Banker's Ass'n* v. *Albright*, 38 N.Y.2d 430, 440 (1975)).

18 N.Y. Banking L. § 96(1).

19 *See Yerkes* v. *Nat'l Bank of Port Jervis*, 69 N.Y. 382, 386 (1877) (A "large branch of banking business" is "that of collecting notes, checks, bills of exchange and other evidences of debt, for other persons.").

20 2013 N.Y. Reg. 334713 (Aug. 21, 2013).

21 *See* 23 N.Y. C.R.R. §§ 1.1-1.7.

22 *New York Bankers Ass'n*, 119 F. Supp. 3d at 194 (citation and alteration omitted).

chartered by New York State. State law preempts local law when the State has "assumed full regulatory responsibility" in the area and the local law "prohibits conduct which the state law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe or imposes additional restrictions on rights granted by state law."[23] New York State has "assumed full regulatory responsibility" over the field of banking,[24] as the New York "Banking Law contains a comprehensive regulatory scheme which evidences the state's intent to occupy the field."[25] The Proposed Amendments impermissibly intrude upon this field by imposing "additional restrictions on" state banks' incidental powers and prohibiting conduct that the Department of Financial Services "considers acceptable or at least does not proscribe."[26] Indeed, the Department of Financial Services exempts banks from its rules governing debt collectors.[27]

This conclusion also means that national banks and banks chartered by other states would not be subject to the Proposed Amendments either. The National Bank Act preempts the application of the Proposed Amendments to national banks. The National Bank Act preempts state law that "discriminates against national banks as compared to state banks."[28] Subjecting national banks to the Proposed Amendments would discriminate against national banks by placing additional burdens on them vis-à-vis banks chartered by New York State, which would not be subject to the Proposed Amendments as a matter of state preemption.[29] As for banks chartered by other states, the New York Banking Law provides that "[a]n out-of-state bank that opens, occupies, or maintains a branch in this state . . . shall have in this state the same powers under the laws of this state as a like-type banking organization."[30] Out-of-state banks accordingly would not be subject to the Proposed Amendments if the Proposed Amendments are preempted as to banks chartered by New York State.

The Proposed Amendments may also be preempted by the National Bank Act for a second reason as well. The National Bank Act preempts non-discriminatory state law that "prevents or significantly interferes with the exercise by the national bank of its powers."[31] Collecting on their

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23 *Police Benevolent Ass'n* v. *City of New York*, 40 N.Y.3d 417, 423 (2023) (citation and alterations omitted).

24 *Id.*

25 *Mayor of City of New York* v. *Council of City of New York*, 4 Misc. 3d 151, 160 (N.Y. Sup. Ct. 2004).

26 *Police Benevolent Ass'n*, 40 N.Y.3d at 423 (citation omitted).

27 23 N.Y. C.R.R. § 1.1(e)(1).

28 *Cantero* v. *Bank of Am., N.A.*, 602 U.S. 205, 213 (2024) (citation omitted); 12 U.S.C. § 25b(b)(1)(A).

29 *See Michigan Nat'l Bank* v. *Michigan*, 365 U.S. 467, 476 (1961) (a "State's tax system . . . discriminates against national banks" if "an investment in national bank shares was placed at a disadvantage by the practical operation of the State's law"); *Cf. United Haulers Ass'n, Inc.* v. *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) ("[D]iscrimination simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.") (citation omitted).

30 N.Y. Banking L. § 226.

31 *Cantero*, 602 U.S. at 209 (citation omitted); 12 U.S.C. § 25b(b)(1)(B).

own debts likely qualifies as one of national banks' incidental powers, as it is "a logical outgrowth of" and "convenient or useful to"[32] banks' enumerated powers to "discount[] and negotiat[e] promissory notes, drafts, bills of exchange, and other evidences of debt" and "loan[] money on personal security."[33] It is true that federal regulations provide, as a general matter, that state laws governing "[r]ights to collect debts" are not preempted "to the extent" those laws do not prevent or significantly interfere with national banks' powers.[34] But DCWP's Proposed Amendments are more burdensome than the debt-collection laws that federal courts have upheld in the face of preemption challenges.[35] As discussed below in greater detail, aspects of the Proposed Amendments significantly interfere with national banks' powers by drastically limiting banks' ability to collect on their own debts and regulating how banks conduct their business operations. Most notably, Section 5-77(f)(11) of the Proposed Amendments seemingly "prevents" national banks from being able to collect on their own debts because it contains a loophole that allows consumers to indefinitely delay collection.

* * *

In light of these problems, the Proposed Amendments are ill suited to banks. Ultimately, by regulating banks in the same or similar manner as third-party debt collectors, the Proposed Amendments will do more harm than good. To avoid this harm, we strongly urge DCWP to exempt banks from the rules governing debt collectors.

Specific Comments

If DCWP nonetheless decides that banks should remain subject to the rules governing debt collectors, we strongly urge it to consider the following comments and recommendations regarding specific provisions of the Proposed Amendments.

I. Definition of "Debt Collection Procedures" – Section 5-76

The Proposed Amendments' definition of "debt collection procedures" is vague and overbroad. DCWP should clarify several aspects of this definition. At bottom, the simplest fix would be to state that for creditors, debt-collection procedures only begin after the creditor has accelerated the unpaid balance of the debt or demanded the full balance due. Short of that, DCWP should consider the following clarifications.

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32 12 C.F.R. § 7.1000.

33 12 U.S.C. § 24(7); *see Miller* v. *King*, 223 U.S. 505, 510 (1912) (National banks "may do those acts and occupy those relations which are usual or necessary in making collections of commercial paper and other evidences of debt."); *First Nat'l Bank* v. *Nat'l Exchange Bank*, 92 U.S. 122, 127 (1875) (The National Bank Act's grant of incidental powers "necessarily implies the right of a bank" to "become the creditor of others" and ensure that "debts due to it" are "collected or secured.").

34 12 C.F.R. § 7.4008(e)(4); *see also Cantero*, 602 U.S. at 213-214.

35 *See Epps* v. *JP Morgan Chase Bank, N.A.*, 675 F.3d 315, 318 n.2 (4th Cir. 2012); *Aguayo* v. *U.S. Bank*, 653 F.3d 912, 919 (9th Cir. 2011).

To start, the Proposed Amendments add a new subsection to the definition of "debt collection procedures," which provides that "the term 'debt collection procedures' means any attempt by any person to collect a debt after . . . the original creditor has transferred the debt to another person to collect, including but not limited to charging off the debt, selling the debt, or placing the debt with a collection agency, an attorney or law firm, *or with another department or unit for collection*."[36] As applied to banks, this subsection imposes substantial burdens with no corresponding benefits to consumers, as it may capture routine internal transfers between departments that could occur as early as day one of delinquency. In these scenarios, it is highly likely that the bank continues to service the account under its own name and the consumer is unaware that a different unit is servicing—or performing a portion of the servicing for—the account. And from the consumer's perspective, it makes little difference which unit or department of the bank is servicing various aspects of the account. The consumer continues to pay and contact the same entity through the same means. Moreover, it is unclear how this provision applies when multiple units or departments are involved in servicing or collection, *e.g.*, when the bank only transfers responsibility for certain aspects of the account to another department. Furthermore, in certain instances federal law already requires loan servicers to inform consumers when the servicer transfers the consumer's account to another non-affiliated entity, rendering this provision unnecessary.[37] DCWP should therefore provide that internal transfers do not trigger debt-collection procedures.

Likewise, this new subsection includes situations where "the original creditor has transferred the debt to another person to collect, including but not limited to . . . selling the debt."[38] This could include any sale of an account or asset, such as portfolio acquisitions and mortgage transfers, even if the account is has not yet been accelerated or charged off. Such a definition sweeps far too broadly. It would require the acquirer to comply with the rules governing debt collectors even if it has no intention of immediately initiating collection and the account has not yet been accelerated or charged off. This would sharply curtail early stage communications with consumers because the acquirer would seemingly have to abide by the communication restrictions set out in section 5-77(b), which limits the frequency and means by which debt collectors can contact consumers. Such early contact frequently helps consumers avoid a variety of potentially negative credit consequences by giving banks the opportunity to offer remediation options, such as workout programs, payment extensions, and loss-mitigation or foreclosure-prevention actions. DCWP should thus alter the definition of "debt collection procedures" such that only sales to entities intending to initiate collection procedures qualify as "selling the debt."

Moreover, the Proposed Amendments also define "debt collection procedures" as "any attempt by any person to collect a debt after . . . the creditor has . . . taken or threatened to take legal action against the consumer."[39] The phrase "legal action" is vague. So too is what constitutes

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36 § 5-76 (emphasis added).

37 *See* 12 U.S.C. § 2605; 12 C.F.R. § 1024.33.

38 § 5-76.

39 § 5-76.

a "threat" of legal action. The combination imposes significant uncertainty on banks, who will be unsure whether routine communications with consumers will trigger their obligations under these rules. For example, it is unclear whether loan-servicing communications that inform consumers of the consequences of default qualify as "threatened . . . legal action." Prohibiting such communications would deprive consumers of useful information on the status of their accounts, their legal obligations, and the ways in which they can avoid default, with no corresponding benefit. To avoid such issues, DCWP should delete the language that a creditor's "threat[] to take legal action against the consumer" qualifies as debt-collection procedures. At a minimum, DCWP should clarify what qualifies as a "threat" and state that "legal action" means filing a lawsuit.

II. Definition of "Original Creditor" – Section 5-76

The Proposed Amendments' definition of "original creditor" is also vague and unclear. An "original creditor" is defined as "any person . . . who originated the debt, including by extending credit and creating the debt."[40] But it is unclear what constitutes "extending credit." Moreover, the definition does not address situations where one entity performs servicing for another or when an account is acquired shortly after its creation. The result is a lack of clarity on who exactly qualifies as an original creditor. To provide one example, in the indirect auto-financing context, a vehicle dealer originates the contract giving rise to the debt and assigns it to the indirect-finance company. In this scenario, it is unclear whether the indirect-finance company also qualifies as an original creditor. To remedy this uncertainty, DCWP should amend this definition to provide that entities who acquire accounts pre-charge-off or engage in servicing prior to charge-off are "original creditors."[41]

III. Communication Restrictions – Section 5-77(b)

The Proposed Amendments' contact restrictions are tailored to third-party debt collectors and, if applied to banks, will cause significant consumer harm. Due to the Proposed Amendments' overbroad definitions of "debt collector" and "debt collection procedures," these restrictions will reduce banks' ability to send early-delinquency communications, which are crucial to assisting consumers in avoiding acceleration or charge-off. The communications restrictions will, therefore, result in more accounts being charged off, which harms both banks and consumers.

A. Contact-Frequency Restriction – Section 5-77(b)(1)(iii)

Section 5-77(b)(1)(iii) of the Proposed Amendments prohibits more than three non-exempt attempted communications within a seven-day period for each distinct account when the debt collector is an original creditor. Although NYBA appreciates the changes DCWP has already made, this section still imposes far more stringent contact limitations than those imposed by state

40 § 5-76.

41 Any revisions proposed in this Comment Letter pertaining to "original creditors" presuppose the acceptance of this suggested revision.

and federal debt-collection rules.[42] Imposing such stringent contact limitations is unnecessary, given that existing consumer-privacy laws and laws prohibiting unfair or deceptive acts and practices already protect consumers from harassing or abusive communications. And unlike third-party debt collectors, the ongoing nature of the consumer-banking relationship incentivizes banks to ensure that consumers have positive customer experiences, even regarding debt collection. Consumers who feel harassed by their bank are unlikely to return to the bank for their future needs, which results in lost revenue and market share for the bank. DCWP should consider further increasing this numerosity restriction, at least as applied to banks, to ensure that banks remain able to have valuable conversations with consumers regarding the status of their accounts and various debt-relief options.

B. Cease-and-Desist Requests – Section 5-77(b)(4)

Section 5-77(b)(4) of the Proposed Amendments will seemingly prohibit banks from requiring a written cease-and-desist notice from consumers to stop collection procedures. This provision provides that debt collectors cannot "communicate or attempt to communicate with a consumer with respect to a debt if the consumer has notified the debt collector that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt."[43] Oral cease-and-desist requests are thus seemingly sufficient under the rule. A written request, however, provides clarity and certainty for both banks and their customers with respect to the specific debt communications at issue and helps ensure that banks can continue to communicate vital information to account holders concerning matters separate from the specified debt. Under many banks' current practices, when a consumer orally requests that a bank "stop calling," the bank will cease calls but continue to send other communications via email or regular mail, including communications for financial assistance options. In contrast, at least some banks treat formal cease-and-desist requests as revocations of consent under the Telephone Consumer Protection Act,[44] meaning the bank will no longer transmit crucial messages such as fraud alerts to the consumer. Clarity about which communications the consumer wishes to cease is thus essential. The best way to ensure that clarity is through a written request—something the current rule seemingly prohibits. Applying this requirement for an oral (as opposed to written) request in the banking context will thus cause more harm than good.

Furthermore, oral requests will also make compliance with the Proposed Amendments' record-retention rules—which include retention of cease-and-desist documentation[45]—particularly difficult. Written requests would simplify banks' record-keeping obligations under Section 5-77(k) of the Proposed Amendments. DCWP should accordingly revise Section 5-

42 *See* 12 C.F.R. § 1006.14(b)(2) (calling a consumer "[m]ore than seven times within seven consecutive days" presumptively violates the FDCPA); N.Y. Gen. Bus. L. § 601(6) (Prohibition on "communicat[ing] with the debtor or any member of his family or household with such frequency or at such unusual hours or in such a manner as can reasonably be expected to abuse or harass the debtor" without a numerical restriction).

43 § 5-77(b)(4).

44 *See* 47 U.S.C. § 227(b)(1)(B).

45 § 5-77(k)(2)(iii).

77(b)(4) of the Proposed Amendments to specify that original creditors can require cease-and-desist requests to be made in writing.

C. Electronic Communications – Section 5-77(b)(5)

There are several issues with the Proposed Amendments' prohibition on contacting consumers through electronic means, which provides that debt collectors cannot "[c]ontact a New York City consumer by electronic communication" unless the debt collector uses a "medium of communication" that is "private and direct to the consumer," obtains the consumer's consent, and informs the consumer of their ability to opt-out of electronic communication.[46]

First, it is unclear what constitutes a "private and direct" means of communication. Section 5-77(b)(5) provides that a debt collector can only communicate electronically with a consumer through "private and direct" means. But the Proposed Amendments do not explain what qualifies as "private and direct." At a minimum, DCWP should confirm that banks can presume that any email address, text-message number, or social-media account which has been provided to the bank by the consumer is "private and direct." Without further clarity, banks and other creditors, if subject to the Proposed Amendments, may have difficulty determining which of these channels is "private and direct" and thus may have to curtail their methods of communication, regardless of consumer preference and expectation. This is particularly burdensome for consumers who have already provided consent to electronic communication using such a specified medium but never confirmed that the medium was "private and direct."

Second, original creditors should not have to re-inform consumers that the consumer can revoke their consent to electronic communications after the institution of debt-collection procedures.[47] Section 5-77(b)(5)(v) already requires debt collectors to include a "clear and conspicuous" opt-out notice "in every electronic communication to the consumer." This opt-out notice adequately informs consumers of their right to revoke consent. Requiring banks to send an additional, standalone notification to consumers upon institution of debt-collection procedures would be burdensome and duplicative with no real benefit.

Third, DCWP must clarify what constitutes compliance with the notice requirement. Section 5-77(b)(5)(iv) requires a "debt collector who sends any disclosures required by this subchapter electronically" do so "in a manner that is reasonably expected to provide actual notice." This provision, however, provides no explanation of what satisfies this requirement. Without additional clarification, the phrase "reasonably expected to provide actual notice" is ambiguous. DCWP should make clear that sending disclosures to any email address, text-message number, or social-media account for which the debt collector has been granted permission to communicate with the consumer satisfies this requirement.

Fourth, DCWP must also clarify the scope of the requirement that creditors provide an "opt-out" option to consumers. Section 5-77(b)(5)(v) appears to require that creditors include an

46 § 5-77(b)(5)(i), (v).

47 *See* § 5-77(b)(5)(i)(B).

opt-out notice in every electronic communication and accept a response from a consumer indicating their desire to opt out of electronic communication. But as currently worded, it is not clear if any reasonable opt-out method is acceptable or if creditors must only permit consumers to reply to an email with "STOP" or a similar phrase. Many banks and other large creditors typically include a link in their emails to enable email opt outs but may not offer two-way email communication platforms. It is unclear if banks' current opt-out systems comply with the rule, or if DCWP is requiring banks to develop specific electronic communication systems capable of monitoring and recognizing various opt-out phrases in various languages. The complexity and risks associated with implementing such systems may deter some banks from utilizing electronic communication altogether and could frustrate consumers who prefer this method of interaction. If DCWP requires banks to implement such systems, it must clarify whether banks need to treat an opt-out request (such as "STOP") as a request to cease all electronic communications, or only cease the specific method of electronic communication. To provide a hypothetical: if a consumer texts a bank "STOP," must the bank cease emailing the consumer? Given these shortcomings, DCWP must clarify what is required under this section. Alternatively, DCWP could provide that any opt-out method that complies with the Fair Debt Collection Practices Act is sufficient.[48]

Fifth, the Proposed Amendments introduce a new subsection, 5-77(b)(5)(i)(B), that exempts original creditors from the written-consent requirement for electronic communications if the creditor obtained consent prior to initiating debt-collection procedures. While this revision is a welcome addition, DCWP should provide banks with a blanket exception to the written-consent requirement if the bank previously obtained consent for electronic communication from the consumer. As currently written, banks may still have to obtain written consent in some circumstances. If, for example, the consumer revokes their prior consent upon initiation of debt-collection procedures but then changes their mind and wishes to resume electronic communications, it appears that the bank must obtain written consent before reinitiating electronic communications. In such circumstances, however, the written-consent requirement serves no real purpose.

D. <u>Communications at Place of Employment – Section 5-77(b)(6)</u>

The Proposed Amendments' new prohibition on contacting consumers during work hours is burdensome and unlikely to benefit consumers. The Proposed Amendments insert language that prohibits debt collectors from attempting to communicate "with a consumer at a time the debt collector knows or should know is during the consumer's work hours" without prior written consent.[49] It is unclear, however, whether or how a bank "should know" a consumer's work hours. Banks do not track their customers' employment, let alone their precise hours. And, as currently written, the provision is extraordinarily broad. For example, if a bank sends a letter to a consumer regarding their account, and the letter is delivered while the consumer is working from home, it is conceivable that the bank has violated this provision. Without clarification, banks could be forced to cease communications with consumers during ordinary work hours (9:00 a.m. to 5:00 p.m.) to avoid inadvertent violations of the rule. This would result in drastically fewer communications

48 *See* 12 C.F.R. § 1006.6(e).

49 § 5-77(b)(6).

between banks and consumers regarding the consumers' debt, leaving consumers less informed about the status of their accounts. The end result will be more accounts sent to third-party debt collectors or law firms, exposing these New Yorkers to litigation and crippling them further financially.

Moreover, when viewed in conjunction with the general prohibition against communicating with consumers before 8:00 a.m. and after 9:00 p.m.,[50] the remaining "convenient" hours are anything but. Debt collectors' communications with consumers would be restricted to: 8:00 a.m. to 8:59 a.m. and 5:01 p.m. to 9:00 p.m. (weekdays) and 8:00 a.m. to 9:00 p.m. (weekends). Not only would restricting communications during these times be inconvenient for consumers, but it would be extremely difficult to implement.

In addition, this section also prohibits debt collectors from communicating with consumers at an email address or phone number the debt collector "knows or should know is provided to the consumer by the consumer's employer."[51] This requirement will pose significant challenges if applied to banks, as they will need to implement new systems to identify and exclude employer-provided contact information. The requirement also fails to account for consumers who are sole proprietors and may only use a single method of electronic communication for their personal and business communications. The additional costs associated with developing and maintaining such a system may further discourage banks from using electronic communication methods, despite their popularity amongst consumers.

Finally, while subsection 5-77(b)(6) allows such communications if the consumer has given "prior written revocable consent," that exception only applies to a "direct number provided by the consumer's employer." As such, it would appear that, even when a consumer opts to provide a debt collector with a work e-mail, the debt collector would not be permitted to contact the consumer via that channel, despite the consumer's preference.

To address these issues, DCWP should eliminate the prohibitions on contacting consumers during work hours and at email addresses and phone numbers provided by their employers.

IV. Language Preference – Section 5-77(e)(9)

Section 5-77(e)(9) of the Proposed Amendments provides that it is "unfair or unconscionable" for a debt collector to collect or attempt to collect a consumer's debt "without recording the language preference of such consumer, except where the debt collector is not aware of such preference despite reasonable attempts to obtain it." It is not clear what exactly this provision prohibits. The first clause of the provision seemingly only penalizes debt collectors who fail to note a consumer's language preference when the consumer informs the debt collector of such a preference. The second clause, however, seems to impose an affirmative duty on debt collectors to determine what a consumer's language preference is before initiating debt-collection procedures. This could be immensely burdensome for banks, who would seemingly have to

50 § 5-77(b)(1)(i).

51 § 5-77(b)(6).

contact every customer based in New York City. Relatedly, it is unclear what, if anything, the bank must do if it only communicates with consumers in English and the consumer expresses a preference for another language, especially given that the DCWP has no authority to require banks to service customers in a language in which they did not contract. Given these issues, DCWP must clarify what exactly this provision requires.

V. Furnishing Information to Consumer-Reporting Agencies – Section 5-77(e)(10)

The Proposed Amendments' fourteen-day restriction on furnishing information to consumer-reporting agencies is preempted by federal law and is not suitable to apply to banks. DCWP has also introduced new language to this provision that could be construed as requiring banks to contact consumers in a manner potentially perceived as threatening and coercive.

The Fair Credit Reporting Act provides that "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under" 15 U.S.C. § 1681s-2, "relating to the responsibilities of persons who furnish information to consumer reporting agencies."[52] Section 1681s-2, in turn, imposes a number of responsibilities on financial institutions, including a duty to continually update credit-reporting agencies to ensure the integrity and accuracy of consumer reports.[53] Consistent with this requirement, 15 U.S.C. § 1681s-2(a)(7) authorizes financial institutions to furnish negative information about a consumer to a consumer-reporting agency and notify the consumer after the fact.[54] Section 5-77(e)(10) of the Proposed Amendments, however, prohibits just that, as it imposes a fourteen-day waiting period before a debt collector can furnish information about a debt to a consumer-reporting agency. This waiting period also arguably conflicts with banks' duty under 15 U.S.C. § 1681s-2 to continually update consumer-reporting agencies. It is therefore a "prohibition . . . with respect to" the "subject matter regulated under" 15 U.S.C. § 1681s-2 and, accordingly, preempted.[55]

In addition to the preemption issue, application of this provision to banks could significantly interfere with their ability to lend. As a general matter, banks typically begin reporting information to consumer-reporting agencies at the inception of an account—prior to any potential collection activity—in order to maintain a healthy credit ecosystem. The Proposed Amendments seemingly require banks to halt their reporting once they begin collecting upon a debt. This requirement could significantly interfere with banks' ability to make responsible, accurate underwriting decisions regarding New York consumers because it means that consumer reports may lack important information about a consumer's creditworthiness. Beyond that, implementing this requirement will be difficult and burdensome for banks given limitations in the

52 15 U.S.C. § 1681t(b)(1)(F).

53 *See* 15 U.S.C. § 1681s-2(a)(2).

54 15 U.S.C. § 1681s-2(a)(7)(B)(i).

55 15 U.S.C. § 1681t(b)(1)(F); *see Galper* v. *JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 446 (2d Cir. 2015) (Section 1681s-2 preempts "those claims that concern a furnisher's responsibilities.") (emphasis omitted).

software and reporting guidelines that many banks use.[56] In addition, if banks simply cease furnishing information to a consumer-reporting agency regarding a debt, the agency may infer that something negative—such as default—has occurred. Once again, this will necessarily and negatively impact the price and availability of credit to New York City consumers without yielding any additional consumer benefit.

The Proposed Amendments also insert new language to section 5-77(e)(10) that requires a debt collector to send a notice to consumers "in the medium of communication used to collect the debt," and "via U.S. Mail or other delivery service" which states that the debt collector intends to report information about the debt to a consumer-reporting agency. This addition seemingly requires banks to provide consumers with at least two notices: one for each "medium of communication used to collect the debt" and one written copy "via U.S. Mail or other delivery service." But bombarding consumers with multiple notices could be interpreted as a threatening or coercive means of collecting the debt.

To address these concerns, DCWP should amend the last paragraph of section 5-77(e)(10) to state that it does not apply to financial institutions who are subject to 15 U.S.C. § 1681s-2(a)(7). At the very least, DCWP should provide that while banks must notify consumers before reporting information about a debt to a consumer-reporting agency, they need not pause their reporting after sending the notice. DCWP should also delete the new language it has inserted into section 5-77(e)(10) and provide that debt collectors, including banks, need only send one notice to the consumer.

VI. Validation of Debts – Section 5-77(f)

Section 5-77(f) of the Proposed Amendments requires debt collectors, others than those subject to the Fair Credit Billing Act, to send a debt-validation notice to consumers, temporarily pause collection activities, and respond to consumers' disputes about a debt in specific ways. Although the exemption for creditors subject to the Fair Credit Billing Act is a meaningful step in the right direction, it does not go far enough because the FCBA is subject to a number of exceptions. It does not, for example, cover loans "made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965."[57] Nor does it appear to cover overdrafts on deposit bank accounts or auto loans.[58] DCWP should expand this exemption to include all original creditors, not just those subject to the Fair Credit Billing Act.

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56 Many banks use "Metro 2," which is the "standard electronic data reporting format" that has been adopted by "the credit reporting industry." *See Metro 2® Format for Credit Reporting*, CONSUMER DATA INDUSTRY ASSOCIATION, https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/ (last accessed June 7, 2025). It does not appear that Metro 2 provides a mechanism for furnishers to pause reporting. Even if furnishers could institute a pause, it may be flagged by the consumer-reporting agency.

57 *See* 15 U.S.C. § 1603(7).

58 *See Rajapakse* v. *Credit Acceptance Corp.*, 2021 WL 3059755, at *3 (6th Cir. March 5, 2021) ("The FCBA applies to open end consumer credit plans, specifically credit card accounts" and "does not apply" to "a closed-end consumer credit transaction," such as a "vehicle loan.") (citation and alteration omitted).

Indeed, the debt-validation requirements are particularly ill-suited to banks, who already provide much of the information contained in the debt-validation notice to consumers as part of the ordinary banking relationship and allow the consumer to dispute this information through the existing state and federal consumer-protection laws discussed above. The debt-validation requirements ensure that a debt collector can prove that it has sufficient information about the debt to justify its collection and provides consumers with sufficient information to identify and confidently engage with the debt collector. This is particularly important if time has elapsed between when the creditor initially stopped collecting the debt and the resumption of communication, or where the debt has been charged-off by the original creditor and sold or otherwise discharged to a third-party who then attempts to collect the debt.

These justifications, however, do not apply to banks because the information provided through a debt-validation notice is duplicative of the timely account information regularly and directly provided to consumers through, for example, statements and other correspondence typical of the ongoing consumer-banking relationship. That is particularly true here as banks may—given the overbroad definition of debt-collection procedures—have to send a debt-validation notice before charge-off while the consumer is still receiving periodic statements and other regular communications regarding their account. Moreover, consumers already can exercise broad rights to dispute and require proof of an alleged debt under existing consumer-protection laws, including the Fair Credit Billing Act[59] and Fair Credit Reporting Act.[60] Requiring banks to send debt-validation notices is thus duplicative and burdensome for banks and confusing for consumers, with no corresponding benefits.

In addition, aspects of the debt-validation requirements also may be preempted by the Fair Credit Reporting Act. Section 5-77(f)(8)(iv) of the Proposed Amendments requires debt collectors to provide disputed debt information to a consumer-reporting agency. It is therefore a "requirement" imposed "with respect to any subject matter regulated under" 15 U.S.C. § 1681s-2 "relating to the responsibilities of persons who furnish information to consumer reporting agencies."[61]

The FCRA separately preempts any "requirement or prohibition" imposed "with respect to any subject matter regulated under" 15 U.S.C. § 1681c, "relating to information contained in consumer reports."[62] Section 5-77(f)(10)(i)(B) of the Proposed Amendments prohibits debt collectors from furnishing information on medical debt to a consumer-reporting agency. But the

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59 15 U.S.C. § 1666.

60 15 U.S.C. § 1681s-2(a)(8); 12 C.F.R. § 1022.43.

61 15 U.S.C. § 1681t(b)(1)(F); *see Galper*, 802 F.3d at 446 (Section 1681s-2 preempts "those claims that concern a furnisher's responsibilities.") (emphasis omitted).

62 15 U.S.C. § 1681t(b)(1)(E).

FCRA allows most medical-debt information to be included in consumer reports.[63] Likewise, 15 U.S.C. § 1681s-2 does not prohibit furnishers from reporting medical-debt, so long as the information is accurate.[64] Section 5-77(f)(10) may therefore amount to a "prohibition" "with respect to" the "responsibilities of persons who furnish information to consumer reporting agencies" and the "information contained in consumer reports."[65]

In light of these issues, DCWP should not subject banks to the debt-validation requirements imposed by section 5-77(f) of the Proposed Amendments.

A. Validation Notice – Section 5-77(f)(1)

If DCWP nonetheless determines that banks must comply with the debt-validation requirements for certain lending products, it should alter several aspects of the validation notice.

First, DCWP must further explain the dictate that the validation notice include "any and all information required by federal and state law,"[66] as well as an itemization of debt containing "the items required under federal or New York State law."[67] It is not clear what this means when applied to original creditors such as banks. Although it seems DCWP is referring to information required by the Fair Debt Collection Practices Act[68] and the New York Department of Financial Services' rules governing debt collection,[69] neither of those laws are applicable to original creditors.[70] It is unclear whether DCWP is incorporating the requirements of those laws into section 5-77(f)(1) by reference, such that banks must include this information in a validation notice, or if only those entities subject to the FDCPA and Department of Financial Services' rules must include the information they require in the validation notice. DCWP should therefore clarify

63 *See* 15 U.S.C. §§ 1681c, 1681b(g); 12 C.F.R. § 1022.30. In the final days of the Biden Administration, the Consumer Financial Protection Bureau issued a rule that generally prohibits consumer-reporting agencies from including medical debt in consumer credit reports and prohibits creditors from considering medical information in credit eligibility determinations. *See* Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information, 90 Fed. Reg. 3276, 3277-3278 (Jan. 14, 2025). Industry groups sued to block the rule, Complaint, *Cornerstone Credit Union League*, 4:25-cv-16, ECF No. 1 (E.D. Tex. Jan. 7, 2025), and the CFPB's current leadership agrees that the rule is unlawful, Joint Motion to Approve Consent Judgment, *Cornerstone Credit Union League*, 4:25-cv-16, ECF No. 33 (E.D. Tex. April 30, 2025). The district court overseeing the litigation is currently considering whether to invalidate the rule. *See* Scheduling Order, *Cornerstone Credit Union League*, 4:25-cv-16, ECF No. 36 (E.D. Tex. May 9, 2025).

64 *See* 15 U.S.C. § 1681s-2(a)(1).

65 15 U.S.C. § 1681t(b)(1)(E), (F).

66 § 5-77(f)(1).

67 § 5-77(f)(1)(viii).

68 15 U.S.C. § 1692 *et seq.*

69 23 N.Y. C.R.R. § 1.1 *et seq*.

70 *See* 15 U.S.C. § 1692a(6)(A); 23 N.Y. C.R.R. § 1.1(e)(1).

what the obligation to include information "required under federal or state law" means when applied to banks and other original creditors.

Second, the requirement that the validation notice include "the name of the natural person for the consumer to contact" is not feasible for banks given the existing structure of their customer-service systems.[71] Banks may field thousands of customer-service calls daily across a wide range of product lines. It is simply not feasible to assign a specific individual contact point for each consumer account given the large number of accounts, the diverse lines of products, and employee turnover. Indeed, this is a recipe for long wait times and poor customer service, as multiple consumers may call the same person and inevitably be put on hold. In addition, many banks utilize automated-voice systems to initially route calls to the appropriate department and ensure that, when the consumer reaches a live customer-service representative, the representative has all the necessary information to assist the consumer. As written, it is unclear whether section 5-77(f)(1)(ii) prohibits the use of these systems. At a minimum, banks will likely have to modify these systems substantially to comply with the rule, which will be a costly, burdensome endeavor with no real benefit to consumers. The likely result will be more charge-offs and more customers being placed with third-party debt collectors when frustrated customers abandon attempts to negotiate repayment plans and settlements with their creditors. DCWP should thus exempt banks from this requirement.

The natural-person requirement is also problematic because it poses serious privacy concerns for bank employees. Many banks have a policy of not disclosing personal information of their employees to consumers. The Proposed Amendments, however, would contravene these policies and require banks to provide the name and contact information of their employees of thousands of consumers. DCWP should therefore eliminate the requirement that the validation notice include the natural person whom the consumer can contact.

B. Verification of Debt – Section 5-77(f)(7)

DCWP should also alter the contents of the verification of debt. As it currently stands, section 5-77(f)(7)(v)(B) requires the verification of debt to include "records reflecting the amount and date of any prior settlement agreement reached in connection with the debt." But requiring banks to include such information is irrelevant and distracts from the verification's purpose—ensuring the bank has sufficient information to collect on the debt and the consumer has sufficient information to engage with the debt collector by confirming the current amount owed. It may also confuse consumers by creating the mistaken impression that the debt is negotiable or the consumer is still eligible for an expired settlement. DCWP should therefore limit the required information in the verification of debt to active or successfully completed settlement agreements.

Relatedly, section 5-77(f)(7)(iv)'s new requirement that original creditors send a notice of unverified debt to consumers if the creditor is unable to verify the debt within 60 days will confuse consumers. A bank's inability to verify the debt within 60 days would likely be due to inadvertent oversight or the complexity of the account rather than an inability to obtain the necessary information. In other words, any delay in sending the verification notice will be temporary.

71 § 5-77(f)(1)(ii).

Sending a notice of unverified debt in this instance has no real purpose, as Section 5-77(f)(7)(ii) already prohibits debt collectors from attempting to collect on the debt until it sends the consumer a written verification of debt. Moreover, sections 5-77(f)(7)(iv) and 5-77(f)(8)(iii) allow original creditors to resume collection efforts upon sending a verification of debt even if a notice of unverified debt has already been sent to the consumer. Requiring banks to send consumers a notice of unverified debt in this situation will only confuse consumers as to the status of their account. DCWP should therefore eliminate the requirement that original creditors, including banks, send consumers a notice of unverified debt if the creditor is unable to verify the debt within 60 days.

C. Expanded Itemization of Debt – Section 5-77(f)(11)

Section 5-77(f)(11) of the Proposed Amendments contains a loophole that seemingly allows consumers to continually delay collection efforts. This section requires debt collectors to treat a consumer's request for an expanded itemization of debt as "an obligation to provide verification of the debt in accordance with" section 5-77(f)(7). Section 5-77(f)(7)(ii), in turn, requires a debt collector to cease collection activity until five business days after sending a verification of debt. And while section 5-77(f)(7) provides that a debt collector need only send a written verification of debt in response to a consumer's first dispute under section 5-77(f)(6), it contains no similar proviso regarding section 5-77(f)(11). Consumers could thus continually and indefinitely delay collection activities by repeatedly requesting an expanded itemization of debt under section 5-77(f)(11). DCWP should close this loophole by making clear that a debt collector need only provide a written expanded itemization of debt in response to the consumer's first request.

This provision is also likely preempted by the National Bank Act. As discussed above, the National Bank Act preempts state law that "prevents or significantly interferes with the exercise by the national bank of its powers."[72] Collecting on their own debts qualifies as one of national banks' incidental powers.[73] Section 5-77(f)(11) of the Proposed Amendments "prevents" national banks from exercising that power, as it effectively prohibits banks from collecting on their own debts.

VII. Links to DCWP's website – Sections 5-77(f)(1)(iv) and 5-77(h)(1)

Several provisions of the Proposed Amendments require debt collectors to include a link to DCWP's website in their communications with consumers or on their own website, if such website is "accessible to the public."[74] This requirement contravenes the security policies of several large banks, which generally prohibit links to external websites. That prohibition is necessary to ensure the safety and security of banks' systems and consumer's information, as banks cannot ensure that third-party websites remain secure. As the recent data breach at the OCC

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72 *Cantero*, 602 U.S. at 209 (citation omitted); 12 U.S.C. § 25b(b)(1)(B).

73 *Miller,* 223 U.S. at 510 (National banks "may do those acts and occupy those relations which are usual or necessary in making collections of commercial paper and other evidences of debt."); *First Nat'l Bank*, 92 U.S. at 127 (The National Bank Act's grant of incidental powers "necessarily implies the right of a bank" to "become the creditor of others" and ensure that "debts due to it" are "collected or secured.").

74 *See* §§ 5-77(f)(1)(vi), 5-77(h)(2).

demonstrates, this concern applies equally to both private and government-run websites.[75] DCWP should thus eliminate the requirements that debt collectors include links to DCWP's website in their communications to consumers.

VIII. Time-Barred Debts – Section 5-77(i)

The provision governing time-barred debt is problematic for several reasons. First, many large banks who operate across multiple jurisdictions apply the shortest statute of limitations to which they are subject in every jurisdiction. It is unclear whether this qualifies as "reasonable procedures for determining the statute of limitations applicable to a debt."[76] Second, the time-barred disclosure, which the debt collector must provide in each communication with the consumer, may give the mistaken impression that there are no consequences for default. The disclosure explains that a debt collector may not sue a consumer after the statute of limitations has expired.[77] But information regarding a defaulted debt will remain on the consumer's credit report for seven years regardless of whether the consumer is sued in connection with the debt.[78] And as currently written, it seems that banks cannot inform consumers of this fact until at least fourteen days after they have sent the consumer the time-barred disclosure. The end result may be that consumers are unwilling to engage with banks regarding time-barred debt and thus suffer negative credit consequences. To avoid these consequences, DCWP would ideally exempt banks from the requirements regarding time-barred debts. At a minimum, it should allow banks to inform consumers of the negative credit consequences of time-barred debt in the time-barred disclosure.

IX. Record-retention requirements – Section 5-77(k)

DCWP must clarify several aspects of the record-retention requirement. First, DCWP must clarify how to calculate the three-year retention period for revolving credit accounts, such as credit cards. As it stands, it is unclear when exactly banks' duty to retain records ceases for such accounts. The following hypothetical demonstrates the difficulty: a consumer falls behind on their credit-card payments in 2026, enters into a voluntary remediation plan with a bank later that year, and successfully completes the plan in 2027, becoming current on their account at that time. Does the banks' duty to retain records "for three years after the debt collector's last collection activity on the debt" cease, *i.e.*, in 2030? Or must the bank retain the records for as long as the consumer maintains their credit-card account with the bank?

Second, it is unclear how exactly this provision applies if a consumer moves to or from New York City while the bank is engaged in debt-collection procedures. DCWP should make clear that a debt collector need not begin maintaining records until the consumer informs the debt

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75 *See OCC Notifies Congress of Incident Involving Email System,* OFFICE OF COMPTROLLER OF THE CURRENCY (April 8, 2025) https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-30.html.

76 § 5-77(i)(1).

77 *See* § 5-77(i)(2).

78 *See* 15 U.S.C. § 1681c(a)(4).

collector that they have established a New York City residence. Similarly, it should make clear that the duty to retain records ceases if a consumer moves from New York City.

X. Effective Date

Currently, the Proposed Amendments are scheduled to take effect on October 1, 2025. The Proposed Amendments, however, are a sea change for the banking industry. Developing the systems necessary to comply with the Proposed Amendments will be a lengthy, resource-intensive process for banks. To ensure adequate time for industry compliance, DCWP should extend the effective date to no earlier than eighteen months after the Proposed Amendments are finalized and adopted.

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In summary, while we share DCWP's commitment to protect consumers from abusive debt-collection practices, we believe that the Proposed Amendments do not further that goal insofar as they apply to banks. The Proposed Amendments are a significant and unwarranted departure from DCWP's prior practice, as well as established state and federal regulatory frameworks. Adoption of the Proposed Amendments will cause significant harm to New York City's banking sector and consumers by undermining existing consumer-banking relationships without providing meaningful new consumer protections. We urge DCWP to withdraw or further modify the Proposed Amendments to exempt banks from the rules' scope or, at a minimum, to adopt our suggested changes to the Proposed Amendments' substantive provisions. We thank you for the opportunity to provide our views and would welcome the chance to discuss these concerns further.

Respectfully Submitted,

The New York Bankers Association

- **Joseph Chanda**
  Please see the attached letter.

  [Comment attachment]
  Comment-on-Further-Amendments-of-Debt-Collector-Rules.pdf

  Comment added June 10, 2025 4:38pm

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June 10, 2025

Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

RE: Proposed Further Amendments of Debt Collector Rules
Documention requirements of § 5-77(f)(7)

Dear Department:

As an attorney representing clients recovering insurance overpayments, I write to comment upon the verification of debt requirements of the proposed rule. My clients do not collect traditional debts. Rather, they assist insurance carriers in recovering overpaid insurance benefits.

The proposed debt collection rules would place requirements on my clients that unduly burden their ability to work with consumers to resolve the unique circumstances causing overpayments. Rather than benefit these consumers, the verification requirements of the proposed rule will unnecessarily delay resolution of the overpayments and increase the costs associated with resolving the matter, including the costs borne by consumers.

§ 5-77(f)(7) of the proposed rule requires specific documentation must be provided whenever a dispute is made by a consumer. The documentation requirements are the same regardless of the specific dispute raised by a consumer. This one-size-fits-all documentation requirement will do little or nothing to assist in resolving most of the disputes received by my clients.

My clients work to recover overpayments made when consumers receive insurance benefits after the policy terminates. Often, the consumers with whom my clients communicate have new insurance available that is responsible for covering the claims at issue. In many cases, the disputes raised by consumers indicate that their new insurance carriers are responsible for paying these claims. When such disputes arise, my clients can often work with consumers to recover these benefits from the new insurance carriers. When the new carrier reimburses the claim, the consumer no longer bears responsibility for the debt. It is a win for both the consumer and original insurer making the overpayment.

For consumers to obtain benefits from their new carrier, timely claims must be submitted. However, the dispute verification requirements of the proposed rule will require my clients to delay providing such assistance until the documentation requirements are met—despite the fact that such documentation will not assist in resolving the consumer's actual concern. To the extent that such delays prohibit a timely submission of a claim to the correct insurer, these delays can cause actual harm to the consumer's ability to receive reimbursement from the correct insurer.

Meanwhile, the consumer will remain contractually obligated to reimburse the original insurer who overpaid the claim.

In summary, the verification rules of § 5-77(f)(7) are a one-size-fits-all documentation requirement that will do nothing to resolve many of the actual disputes sent to my clients. I encourage the Department to adopt a more flexible approach. To the extent that a consumer disputes a debt, the verification requirement should be reasonably adapted to address the actual dispute raised by a consumer. The rigid documentation requirement of the proposed rule only serves to needlessly increase the costs to everyone involved, including the consumer.

Thank you for the opportunity to comment upon this rule.

Sincerely,

Joseph Chanda

Joseph W. Chanda